

## **TITLE 49 PUBLIC UTILITIES**

### **CHAPTER 49-01 PUBLIC SERVICE COMMISSION**

**49-01-01. Definitions.** In this title, unless the context or subject matter otherwise requires:

1. "Commission" means the public service commission.
2. "Commissioner" means one of the members of the public service commission.
3. "Public utility" includes any association, person, firm, corporation, limited liability company, or agency engaged or employed in any business enumerated in this title.
4. "Rate" means and includes every compensation, charge, fare, toll, rental, and classification, or any of them, demanded, observed, charged, or collected by any public utility for any service, product, or commodity, offered by it to the public, and any rules, regulations, practices, or contracts affecting any such compensation, charge, fare, toll, rental, or classification.

**49-01-02. Public service commission - How constituted.** The three persons elected public service commissioners, pursuant to the provisions of article V, section 12 of the Constitution of North Dakota, constitute and shall be known and designated as the public service commission of the state of North Dakota. They shall elect one of their number president of the commission and shall appoint a secretary.

**49-01-03. Oath of public service commissioners.** Each commissioner before entering upon the duties of the office shall take the oath required of civil officers.

**49-01-04. Offices of public service commission.** The commissioners shall keep their office at the seat of government and shall be provided with a suitable room, necessary office furniture, stationery, books, and maps, the expense thereof to be paid out of the state treasury pursuant to the appropriation for such purpose.

**49-01-05. Salary of commissioners.** The annual salary of a commissioner is fifty-eight thousand two hundred sixty-two dollars through June 30, 2000, fifty-nine thousand four hundred twenty-eight dollars through December 31, 2000, and sixty-four thousand five hundred sixty-nine dollars thereafter. All fees received or charged by any commissioner for any act or service rendered in any official capacity must be accounted for and paid over by the commissioner monthly to the state treasurer and must be credited to the general fund of the state.

**49-01-06. Public service commission - Majority vote.** All questions arising in connection with the action of the commissioners shall be decided by a majority vote.

**49-01-07. Proceedings of public service commission.** The commission in all cases may conduct its proceedings, when not otherwise particularly prescribed by law, in a manner most conducive to the proper dispatch of business and to the ends of justice. A majority of the commission shall constitute a quorum for the transaction of business, but a commissioner shall not participate in any hearing or proceeding in which that commissioner has any direct personal pecuniary interest. The commission from time to time may make or amend such general rules or orders as may be requisite for the orderly regulation of proceedings before it, including forms of notice and the service thereof, which shall conform as nearly as possible to those in use in the courts of this state. Any party may appear before the commission and may be heard in person or by attorney. Every vote and official action of the commission shall be entered of record and its proceedings shall be public upon the request of any person interested. The commission shall

have an official seal, which shall be judicially noticed, and every commissioner shall have the right to administer oaths and affirmations in any proceeding pending before the commission.

**49-01-08. Appointment of examiners by public service commission.** The commission may designate any special assistant attorney general appointed by the attorney general as commerce counsel or counsel to the commission, the director of auto transportation, the chief statistician, the chief engineer, or any other person qualified in the law or possessing knowledge or expertise in the subject matter of the hearing to act as examiner for the purpose of holding any hearing which the commission, or any member thereof, has power or authority to hold.

**49-01-09. Attorneys for public service commission - Attorney general - State's attorney - Duties - Additional counsel - Compensation.** The attorney general shall be ex officio attorney for the commission and personally or through commerce counsel shall:

1. Give to the commission such counsel, advice, and assistance necessary for the proper discharge of its powers and duties.
2. Appear for, and represent, the state at all hearings of the commission or appeals therefrom when necessary.
3. Institute, prosecute, or defend any action or proceeding which the commission may deem proper and expedient.

The state's attorney in any county, on request of the commission, shall institute, prosecute, appear in, and defend for the commission any and all actions and proceedings which the commission may institute and prosecute or to which the commission is a party. The commission may employ additional counsel to assist such attorney general or state's attorney, when in its judgment the exigencies of the case may require. The fee of such additional counsel shall be determined by the commission and approved by the office of management and budget and paid out of funds appropriated for such purpose.

**49-01-10. Assistants - Authority of public service commission to appoint.** The commission may employ stenographers, rate experts, and such other employees as may be deemed necessary in the discharge of its official duties.

**49-01-11. Enforcement of orders of commission - Costs and expenses.** All costs and expenses actually incurred by or upon the order of the attorney general incident to any litigation arising in connection with the enforcement of orders of the commission or other litigation commenced by or in charge of the attorney general shall be paid out of the general fund of the state upon vouchers to be approved by the office of the budget.

**49-01-12. Disposition of penalties.** Except as otherwise provided, any penalty which shall be collected for violation of any provision of this title shall be paid into the state treasury for the general fund.

**49-01-13. Biennial report.** The commission shall submit a report to the governor and the secretary of state in accordance with section 54-06-04.

**49-01-14. When copies of official documents are evidence.** Copies of all official documents and orders filed or deposited according to law in the office of the commission, certified by a commissioner or by the secretary or assistant secretary of the commission under its official seal to be true copies of the originals, shall be evidence in like manner as the originals.

**49-01-15. Charges for copies and records determined by the public service commission.** The commission shall determine and fix all charges for furnishing copies, records, reports, and evidence. All fees charged and collected under this section, except those for transcripts of evidence which shall be paid to the person preparing such transcripts, shall be paid into the general fund of the state treasury.

## **CHAPTER 49-02 POWERS OF COMMISSION GENERALLY**

**49-02-01. General jurisdiction of the public service commission over public utilities.** The general jurisdiction of the commission shall extend to and include:

1. Contract and common carriers engaged in the transportation of persons and property, excluding air carriers.
2. Telecommunications companies engaged in the furnishing of telecommunications services as provided for in chapter 49-21.
3. Pipeline utilities engaged in the transportation of gas, oil, coal, and water.
4. Electric utilities engaged in the generation and distribution of light, heat, or power.
5. Gas utilities engaged in the distribution of natural, synthetic, or artificial gas.
6. All heating utilities engaged in the distribution of heat.
7. Warehouse companies engaged in the marketing, storage, or handling of agricultural products.
8. All other public utilities engaged in business in this state or in any county, city, township, or other political subdivision of the state.

**49-02-01.1. Jurisdiction of commission limited as to certain utilities.** Nothing in this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates, contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of any public utility owned and operated by the state or by any city, county, township, or other political subdivision of the state or any public utility, that is not operated for profit, that is operated as a nonprofit, cooperative, or mutual telecommunications company or is a telecommunications company having fewer than eight thousand local exchange subscribers. However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual telecommunications company or has fewer than eight thousand local exchange subscribers is subject to sections 49-21-01.4, 49-21-02.4, 49-21-08, 49-21-23, 49-21-24, and 49-21-25, subsections 6 through 14 of section 49-21-01.7, and to sections 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07, 49-21-09, and 49-21-10, regarding rates, terms, and conditions of access services or connection between facilities and transfer of telecommunications between two or more telecommunications companies. Nothing in this section limits the authority of the commission under chapter 49-03.1 or sections 49-04-05 and 49-04-06.

**49-02-01.2. Pipeline safety - Public service commission jurisdiction - Hazardous facility orders.**

1. The commission, by rule, may establish and enforce minimum safety standards for the design, construction, and operation of gas distribution facilities and intrastate pipeline facilities used for the distribution and intrastate transportation of gas, liquefied natural gas, or hazardous liquids, regardless of whether they are owned or operated by a public utility, in order to ensure the reasonable safety thereof. Any rule issued under this section affecting the design, installation, construction, initial inspection, and initial testing is not applicable to pipeline facilities in existence on the date such rule is adopted. Such rules may not be more stringent than the corresponding federal regulations applicable to interstate pipelines and related facilities.

2. If the commission determines that a pipeline facility is hazardous to life or property, it may issue an order requiring the operator of the facility to take corrective action. The commission may issue such an order without notice and opportunity for hearing if the commission determines that to do otherwise would result in the likelihood of serious harm to life or property. The commission shall include in such an order an opportunity for hearing as soon as practicable after issuance of the order.

**49-02-02. Powers of public service commission with reference to public utilities.**

The commission shall have power to:

1. Investigate all methods and practices of public utilities or other persons, subject to the provisions of this title.
2. Require public utilities or other persons to conform to the laws of this state and to all rules, regulations, and orders of the commission not contrary to law.
3. Require copies of reports, rates, classifications, schedules, and timetables in effect and used by such utilities or other persons and all other information desired by the commission relating to such investigations and requirements to be filed with the commission.
4. Compel obedience to its lawful orders by proceedings of mandamus or injunction or other proper proceedings, in the name of the state, in any court having jurisdiction of the parties or of the subject matter.
5. Hold hearings on good cause being shown therefor or on its own motion, and to provide notice thereof and to shorten the period for which notice must be given prior to hearing, when good cause exists for such action. Such notice, however, must be reasonable in view of the nature, scope, and importance of the hearing. Whenever it appears to the satisfaction of the commission that all of the interested parties have agreed concerning the matter at hand, or that no interested party has asked for a hearing, the commission may issue its order without a hearing.
6. Employ, and fix the compensation of, rate experts, engineers, auditors, attorneys, and all other expert help and assistance for hearings or investigations on rate increase applications filed by gas or electric public utilities. The expense of any hearings or investigations and the actual expenses of any employees of the commission while engaged upon any hearing or investigation must upon the order of the commission be paid by the public utility involved. The commission shall ascertain the costs and expenditures. After giving the public utility notice and opportunity to demand a hearing, and after a hearing, if any, is held, the commission shall render a bill and make an order for payment by certified mail or by personal delivery to one of the managing officers of the public utility. The billing and order may be made from time to time during the hearing or investigation or at the conclusion thereof, as the commission determines. Upon receipt of the bill and order for payment, as evidenced by return receipt or other proof, the public utility shall pay to the commission the amount billed. All amounts not paid within thirty days after receipt of the order for payment draw interest at the rate of six percent per annum from the date of receipt of the order. All costs and expenses collected by the commission under this subsection must be deposited in a special account within the public service commission.
7. Cooperate with and receive technical and financial assistance from the United States, any state, or any department, agency, or officer thereof for any purposes relating to federal energy laws that deal with energy conservation, coal conversion, rate reform, and utilities subject to the jurisdiction of the commission. The commission shall also have the authority to file any reports, hold hearings, and promulgate regulations for any such purposes.

8. Cooperate with and receive technical and financial assistance from the United States, any state, or any department, agency, or officer thereof, and to file such reports and promulgate rules as required by federal law or regulation for any purposes relating to the regulation of safety standards for pipeline facilities and the transportation associated with those pipeline facilities.

**49-02-03. Power of public service commission to establish rates.** The commission shall supervise the rates of all public utilities. It shall have the power, after notice and hearing, to originate, establish, modify, adjust, promulgate, and enforce tariffs, rates, joint rates, and charges of all public utilities. Whenever the commission, after hearing, shall find any existing rates, tariffs, joint rates, or schedules unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any of the provisions of this title, the commission by order shall fix reasonable rates, joint rates, charges, or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any provision of law.

**49-02-03.1. Power to fix special rates - Public service commission.** Repealed by S.L. 1963, ch. 322, § 2.

**49-02-04. Power of commission to regulate services.** Whenever the commission shall find, after hearing, that the rules, regulations, practices, equipment, appliances, facilities, or service of any public utility, or the methods of manufacture, distribution, transmission, storage, or supply employed by it are unjust, unreasonable, unsafe, improper, inadequate, or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate, or sufficient rules, regulations, practices, equipment, appliances, facilities, service, or methods to be observed, furnished, constructed, enforced, or employed, and, after hearing, shall fix the same by its order, rule, or regulation. The commission shall prescribe, after hearing, rules and regulations for the performance of any service, or the furnishing of any commodity, of a character furnished or supplied by any public utility. On demand and tender of rates, such public utility shall furnish such commodity and render such service within the time and upon the conditions provided in such rules.

**49-02-05. Use by one utility of the facilities of another utility.** Whenever upon hearing, after due notice, the commission has found that public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes, or other equipment, or any part thereof, on, over, or under any street or highway and belonging to another public utility and that such use will not result in irreparable injury to the owner or other users of such conduits, subways, tracks, wires, poles, pipes, or other equipment, nor any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the commission, by order, may direct that such use be permitted, and may prescribe reasonable compensation and reasonable terms and conditions for such joint use. If such use is directed, the public utility to which the use is permitted shall be liable to the owner or other users of such conduits, tracks, wires, poles, pipes, or other equipment for such damage as may result therefrom to the property of such owner or other users thereof.

**49-02-05.1. Power to fix terms by which the facilities of one utility may cross those of another utility.** Whenever public convenience and necessity requires that an electric or telecommunications distribution or transmission line, pipeline, or railroad track of any public utility cross a line or track of another public utility and the public utilities have failed to agree upon the terms and conditions or compensation for the same, the commission, after notice and hearing, may prescribe reasonable terms, conditions, and compensation under which the crossing shall be permitted.

**49-02-06. Entering premises of public utility by public service commission for examination purposes.** The commission and its officers and employees shall have the power to enter upon any premises occupied by any public utility for the purpose of:

1. Making examinations and tests;

2. Setting out and using on said premises any weights or appliances necessary therefor; or
3. Exercising any of the powers provided for in this chapter.

**49-02-07. Appliances tested on request of consumer - Fee for testing.** Any consumer or user of any product, commodity, or service of a public utility may have any appliance used in the measurement thereof tested by paying the fees fixed by the commission. The commission shall establish and fix reasonable fees to be paid for testing such appliances.

**49-02-08. Testing meters - Gas - Electric.** The commission shall make tests, from time to time, of meters of public utilities used:

1. To measure the amount of electric current passing through such meters to consumers.
2. To measure the amount of gas passing through such meters for the use of its customers.
3. To determine the British thermal unit content of natural or artificial gas distributed by public utilities in this state.

**49-02-09. Purpose of testing meters.** Tests shall be made for the purpose of determining the accuracy of the meters and shall determine whether or not the British thermal unit content of gas, either natural or artificial, distributed by public utilities, is of the standard that now or hereafter may be prescribed by the commission under its general powers and duties.

**49-02-10. Rules for meters.** The commission shall make such rules as it may deem proper and necessary as to the manner in which tests of meters and heat values shall be made.

**49-02-11. Standards - Classification - Examinations - Provided by public service commission.** The commission shall:

1. Ascertain and fix just and reasonable standards, classifications, regulations, practices, measurements, or services to be furnished, imposed, observed, and followed by all public utilities.
2. Ascertain and fix adequate and serviceable standards for the measurement, quantity, quality, pressure, initial voltage, or other condition pertaining to the supply of the product, commodity, or service furnished or rendered by any such public utility.
3. Prescribe reasonable regulations for the examination and testing of such product, commodity, or service and for the measurement thereof.
4. Establish reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters and appliances for measurements.
5. Provide for the examination and testing of any and all such appliances used for the measurement of any product, commodity, or service of any public utility.

**49-02-12. System of accounts, records, and memoranda established.** The commission shall:

1. Establish a system of accounts to be kept by a public utility subject to its jurisdiction.
2. Classify public utilities, establish a system of accounts for each class, and prescribe the manner in which such accounts shall be kept.

3. Prescribe the forms for accounts, records, and memoranda to be kept by such public utilities, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys, which the commission may deem necessary to carry out any of the provisions of this title.

**49-02-13. Jurisdiction of commission limited as to municipal utilities.** Repealed by omission from this code.

**49-02-14. Inspection of public utility accounts - Right as to examinations.** The commission, and each commissioner, and each officer or other person duly authorized by the commission, shall have the right, at any time, to inspect the accounts, books, papers, and documents of any public utility. The commission, each commissioner, any officer of the commission, or any employee authorized to administer oaths shall have the power to examine, under oath, any officer, agent, or employee of any public utility in relation to the business and affairs of such public utility.

**49-02-15. Excessive or discriminatory charges - Reparation.** When complaint has been made to the commission concerning any rate or charge for any product or commodity furnished or service performed by any public utility, and the commission has found, upon a hearing after notice given as required by this title, that the public utility has charged an excessive or discriminatory amount for such product, commodity, or service, in excess of the schedules, rates, and tariffs on file with the commission, or has discriminated under said schedules against the complainant, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection, if no discrimination will result from such reparation.

**49-02-16. Investigation of interstate rates.** The commission shall exercise constant diligence in informing itself of the rates, rules, and practices of common carriers engaged in:

1. The transportation of freight, express, and passengers;
2. The transportation by pipeline of crude petroleum, gas, or other petroleum products; or
3. The transmission of messages or intelligence,

from points in this state to points beyond its limits and from points in other states to points in this state and in territory wholly outside of this state.

**49-02-17. Unreasonable rates, rules, and practices affecting interstate commerce.** Whenever it shall come to the knowledge of the commission, either from its own investigation or by complaint made to it in any manner whatsoever, that the rates charged by any public utility including any common carrier on interstate business are unjust or unreasonable or that the rates, rules, or practices of such utility:

1. Discriminate unjustly against the citizens, industries, or interests of this state;
2. Place any of the citizens, industries, or interests of this state at an unreasonable disadvantage as compared with those of other states; or
3. Are levied, laid, or otherwise in violation of federal law, rulings, orders, or regulations,

the commission immediately shall call such facts to the attention of the officials of such public utility and urge upon them the propriety of changing such rates, rules, or practices.

**49-02-18. Failure of utility to adjust rates - Action by public service commission.** Whenever discriminatory, unreasonable, or unjust, rates, rules, or practices on interstate business are not changed or adjusted so as to remove or remedy the discrimination,

unreasonableness, or unjustness, within a reasonable time, the commission shall take the action necessary in an appropriate proceeding to obtain relief from such rates, rules, or practices. If the commission deems it necessary, the attorney general, with such other assistance as may be provided by law, shall prosecute any charge growing out of any such discrimination.

**49-02-19. Power to fix special rates - Public service commission.** Repealed by omission from this code.

**49-02-20. Notice to be given before special rate fixed.** Repealed by S.L. 1963, ch. 322, § 2.

**49-02-21. Power of commission to regulate raising and lowering of electric supply and communication lines.** The public service commission shall have power:

1. To regulate the raising and lowering of electric supply and communication lines to permit the movement of buildings or other bulky objects; and to adopt and promulgate, after notice and hearing, reasonable rules and regulations pertaining thereto.
2. To require, after notice and hearing, increased clearances in specific locations where electric supply and communication lines cross public roads and streets, provided that the movement of buildings or other bulky objects thereon is sufficiently frequent to so warrant.

**49-02-22. Charges for raising and lowering lines - Reimbursement for unreasonable delay.** Any party requesting the raising or lowering of electric supply and communication lines shall be required to pay not more than the actual cost reasonably and necessarily incurred therefor. The commission shall, upon application, and after notice and hearing, review and determine the reasonableness of any charges assessed for the raising and lowering of electric supply and communication lines, and if said charges are found unreasonable, the commission shall fix a just and reasonable charge; provided, however, that any person, firm, corporation, or limited liability company in charge of electric supply or communication lines, who shall fail, except for good cause, to have said lines raised or lowered to permit the movement of buildings or other bulky objects at the time agreed upon, shall be liable for reasonable costs, damages, and expenses occasioned by such unreasonable delay.

**49-02-23. Consideration of environmental externality values prohibited.** The commission may not use, require the use of, or allow electric utilities to use environmental externality values in the planning, selection, or acquisition of electric resources or the setting of rates for providing electric service. Environmental externality values are numerical costs or quantified values that are assigned to represent either:

1. Environmental costs that are not internalized in the cost of production or the market price of electricity from a particular electric resource; or
2. The alleged costs of complying with future environmental laws or regulations that have not yet been enacted.



## **CHAPTER 49-03 ELECTRIC UTILITY FRANCHISE**

**49-03-01. Certificate of public convenience and necessity - Secured by electric public utility.** No electric public utility henceforth shall begin construction or operation of a public utility plant or system, or of an extension of a plant or system, except as provided below, without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction and operation. This section does not require an electric public utility to secure a certificate for an extension within any municipality within which it has lawfully commenced operations. If any electric public utility in constructing or extending its line, plant, or system, unreasonably interferes with or is about to interfere unreasonably with the service or system of any other electric public utility, or any electric cooperative corporation, the commission, on complaint of the electric public utility or the electric cooperative corporation claiming to be injuriously affected, after notice and hearing as provided in this title, may order enforcement of this section with respect to the offending electric public utility and prescribe just and reasonable terms and conditions.

**49-03-01.1. Limitation on electric transmission and distribution lines, extensions, and service by electric public utilities.** No electric public utility henceforth shall begin in the construction or operation of a public utility plant or system or extension thereof without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction and operation, nor shall such public utility henceforth extend its electric transmission or distribution lines beyond or outside of the corporate limits of any municipality, nor shall it serve any customer where the place to be served is not located within the corporate limits of a municipality, unless and until, after application, such electric public utility has obtained an order from the commission authorizing such extension and service and a certificate that public convenience and necessity require that permission be given to extend such lines and to serve such customer.

**49-03-01.2. Limitation on issuance of orders and certificates of public convenience and necessity to electric public utilities.** Repealed by S.L. 1979, ch. 187, § 108.

**49-03-01.3. Exclusions from limitations on electric distribution lines, extension, and service and on issuance of certificates of public convenience and necessity.** Sections 49-03-01 through 49-03-01.5 shall not be construed to require any such electric public utility to secure such order or certificate for an extension of its electric distribution lines within the corporate limits of any municipality within which it has lawfully commenced operations; provided, however, that such extension or extensions shall not interfere with existing services provided by a rural electric cooperative or another electric public utility within such municipality; and provided duplication of services is not deemed unreasonable by the commission.

Sections 49-03-01 through 49-03-01.5 shall not be construed to require an electric public utility to discontinue service to customers thereof whose places receiving service are located outside the corporate limits of a municipality on July 1, 1965; provided, however, that within ninety days after July 1, 1965, any electric public utility furnishing service to customers whose places receiving service are located outside the corporate limits of a municipality shall file with the commission a complete map or maps of its electric distribution system showing all places in North Dakota which are located outside the corporate limits of a municipality and which are receiving its service as of July 1, 1965. After ninety days from July 1, 1965, unless a customer whose place being served is located outside the corporate limits of a municipality is shown on said map or maps, it shall be conclusively presumed that such customer was not being served on July 1, 1965, and cannot be served until after compliance with the provisions of section 49-03-01.1.

**49-03-01.4. Enforcement of act.** If any electric public utility violates or threatens to violate any of the provisions of sections 49-03-01 through 49-03-01.5 or interferes with or

threatens to interfere with the service or system of any other electric public utility or rural electric cooperative, the commission, after complaint, notice, and hearing as provided in chapter 28-32, shall make its order restraining and enjoining said electric public utility from constructing or extending its interfering lines, plant, or system. In addition to the restraint imposed, the commission shall prescribe such terms and conditions as it shall deem reasonable and proper.

Provided, further, that nothing herein contained shall be construed to prohibit or limit any person, who has been injured in the person's business or property by reason of a violation of sections 49-03-01 through 49-03-01.5 by any electric public utility or electric cooperative corporation, from bringing an action for damages in any district court of this state to recover such damages.

**49-03-01.5. Definitions.** As used in sections 49-03-01 through 49-03-01.5:

1. "Electric public utility" means a privately owned supplier of electricity offering to supply or supplying electricity to the general public.
2. "Person" includes an individual, an electric public utility, a corporation, a limited liability company, an association, or a rural electric cooperative.
3. "Rural electric cooperative" includes any electric cooperative organized under chapter 10-13. An electric cooperative, composed of members as prescribed by law, shall not be deemed to be an electric public utility.

**49-03-02. Prerequisites to issuance of certificate of public convenience and necessity.** Before any certificate may issue under this chapter, a certified copy of the articles of incorporation or charter of the utility, if the applicant is a corporation, or a certified copy of the articles of organization of the utility, if the applicant is a limited liability company, shall be filed with the commission. At the hearing of said application upon notice as provided in this title, the utility shall submit evidence showing that such applicant has received the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, if required, or has or is about to make application therefor. The commission shall have the power, after notice and hearing, to:

1. Issue the certificate prayed for;
2. Refuse to issue such certificate;
3. Issue it for the construction or operation of a portion only of the contemplated facility, line, plant, system, or extension thereof; or
4. Issue it for the partial exercise of the right or privilege sought, conditioned upon the applicant's having secured or upon the applicant's securing the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, and may attach to the exercise of the rights granted by any certificate such terms and conditions as in its judgment the public convenience and necessity may require.

Notwithstanding any of the foregoing provisions, the commission may grant a certificate if no interested party, including any local electric cooperative, has requested a hearing on said application after receiving at least twenty days' notice of opportunity to request such hearing.

**49-03-03. Franchise not to be exercised without certificate.** No public utility henceforth shall exercise any right or privilege under any franchise or certificate hereafter granted, or under any franchise or certificate heretofore granted, the exercise of which has been suspended or discontinued for more than one year, without first obtaining from the commission a certificate that public convenience and necessity require the exercise of such right or privilege.

**49-03-04. Replacement or renewal of franchise - Certificate of public convenience and necessity not necessary.** No public utility need secure a renewal certificate of public convenience and necessity under this chapter in order to exercise rights under an ordinance hereafter granted where it has not suspended operation of its plant and where such franchise merely replaces or renews an expiring or expired franchise.

**49-03-05. Complaint upon violation of chapter.** Whenever a public utility engages or is about to engage in construction or operation as described in this chapter without having secured a certificate of public convenience and necessity as required by the provisions of this chapter, or whenever a public utility constructs or extends its line, plant, or system, or supplies, or offers to supply electric service in violation of this chapter, any interested municipality, public authority, utility, electric cooperative corporation, or person, may file a complaint with the commission. The commission thereupon, or upon its own motion without complaint, with or without notice, may make its order requiring the public utility complained of to cease and desist from such construction or operation or other prohibited activity until the further order of the commission. Upon hearing had after due notice given, the commission shall make such order with respect to such public utility and prescribe such terms and conditions as are just and reasonable.

## **CHAPTER 49-03.1**

### **UTILITY FRANCHISE FOR OTHER THAN ELECTRIC UTILITIES AND CARRIERS FOR HIRE**

**49-03.1-01. Certificates of public convenience and necessity - Who to secure.** No public utility shall begin construction or operation of a public utility plant or system without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction and operation.

**49-03.1-02. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" means the public service commission.
2. "Public utility" includes any association, person, firm, corporation, limited liability company, or agency engaged or employed in this state to furnish its product or services to the public generally which is statutorily subject to the jurisdiction of the commission. The words "public utility" as used in this chapter shall not apply to electric public utilities or motor carriers of persons or property for hire.

**49-03.1-03. Certificate application.** Application for a certificate of public convenience and necessity shall be made upon forms prescribed by the commission. The commission shall make regulations for the filing of such application. The application must contain a financial statement, a description of the type of service to be offered, a map and description of the area to be served, and a list of all other public utilities providing similar service in the area. Upon the filing of an application for a certificate of public convenience and necessity, the commission shall set a hearing date which shall not be less than twenty days after the filing. The commission shall cause notice of the hearing to be served by certified mail, at least ten days before the day of hearing, upon every public utility which is operating, or which has applied for a certificate of public convenience and necessity, in the area proposed to be served by the applicant, and on other interested parties as determined by the commission.

**49-03.1-04. Factors to be considered by commission in granting or denying a certificate.** Before granting a certificate of public convenience and necessity, the commission shall take into consideration:

1. Need for the service.
2. Fitness and ability of applicant to provide service.
3. Effect on other public utilities providing similar service.
4. Adequacy of proposed service.
5. The technical, financial, and managerial ability of the applicant to provide service.

**49-03.1-05. Prerequisites to issuance of certificate of public convenience and necessity - Waiver of hearing.** Before any certificate may be issued under this chapter, a certified copy of the articles of incorporation, charter, or organization of the public utility, if the applicant is a corporation or a limited liability company, shall be filed with the commission. At the hearing on the application as provided in section 49-03.1-03, the applicant shall submit evidence showing that the applicant has received the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, if required, or has or is about to make application therefor. The commission shall have the power, after notice and hearing, to do any of the following:

1. Issue the certificate.
2. Refuse to issue the certificate.
3. Issue the certificate for the construction or operation of only a portion of the contemplated facility, line, plant, or system.
4. Issue the certificate for the partial exercise of the right or privilege sought, conditioned upon the applicant's having secured or upon the applicant's securing the consent, franchise, permit, ordinance, or other authority of the proper municipality or other public authority, and may attach to the exercise of the rights granted by any certificate such terms and conditions as in its judgment the public convenience and necessity may require.

Notwithstanding any of the foregoing provisions, the commission may grant a certificate if no interested party has requested a hearing on the application after receiving at least twenty days' notice of opportunity to request such hearing.

**49-03.1-06. Franchise not to be exercised without certificate.** No public utility henceforth shall exercise any right or privilege under any franchise or certificate hereafter granted, or under any franchise or certificate heretofore granted, the exercise of which has been suspended or discontinued for more than one year, without first obtaining from the commission a certificate that public convenience and necessity require the exercise of such right or privilege.

**49-03.1-07. Replacement or renewal of franchise - Certificate of public convenience and necessity not necessary.** No public utility need secure a renewal certificate of public convenience and necessity under this chapter in order to exercise rights under a franchise hereafter granted where it has not suspended operation of its plant and where such franchise merely replaces or renews an expiring or expired franchise.

**49-03.1-08. Complaint upon violation of chapter.** Whenever a public utility engages or is about to engage in construction or operation as described in this chapter without having secured a certificate of public convenience and necessity as required by this chapter, any interested municipality, public authority, public utility, corporation, limited liability company, or person may file a complaint with the commission. The commission thereupon, or upon its own motion without complaint, with or without notice, may order the public utility complained of to cease and desist the construction, operation, or other prohibited activity until further order of the commission. Upon hearing, after due notice, the commission shall order enforcement of this section with respect to the offending public utility and prescribe just and reasonable terms and conditions.

## **CHAPTER 49-04 DUTIES OF PUBLIC UTILITIES**

**49-04-01. Public utility to provide adequate service.** Every public utility shall furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and the public, and as shall be in all respects adequate, convenient, just, and reasonable, and without any unjust discrimination or preference.

**49-04-02. Reasonable charges for services and commodities of public utility.** All rates and charges made, demanded, or received by any public utility or by any two or more public utilities for any product or commodity furnished or to be furnished, or any service rendered or to be rendered, shall be just and reasonable. Every unjust and unreasonable rate or charge made, demanded, or received for such product, commodity, or service is prohibited and unlawful.

**49-04-02.1. Customer deposits - Interest.** A public utility may require from a customer a deposit for service in accordance with commission rules. A public utility shall pay interest on all customer deposits for service held by such utility at a rate to be determined by the commission.

**49-04-03. Violation of prescribed system of accounts unlawful.** When the commission shall have prescribed the forms for accounts, records, or memoranda to be kept by any public utility for any of its business, it thereafter shall be unlawful for such public utility to keep any accounts, records, or memoranda of such business other than those prescribed by the commission and those prescribed by or under authority of any other state or of the United States, with the exception of such accounts, records, or memoranda as shall be explanatory of and supplemental to the accounts, records, or memoranda prescribed by the commission.

**49-04-04. Power of public utility to issue evidence of indebtedness.** The power of a public utility to issue stocks, bonds, notes, and other evidences of indebtedness or to create liens upon its property situated in this state, except such as are payable within one year from date of issue, is a special privilege and shall be exercised by such utility under the supervision, regulation, restriction, and control of the commission, subject to such rules and regulations as the commission may prescribe. This section does not apply to the issuance by public utilities of securities registered with the federal securities and exchange commission or to the issuance by public utilities of securities not involving any public offering.

**49-04-05. Commission approval required to dispose of or encumber franchises, works, or systems - Exceptions.** A public utility may not dispose of, encumber, merge, or consolidate its franchise, works, or system necessary or useful in the performance of its duties to the public without prior commission approval. This section does not apply to:

1. Disposal or encumbrance of tangible property valued at less than five hundred thousand dollars.
2. Sale of securities registered with the federal securities and exchange commission.

**49-04-06. Acquiring stock or membership interest or business of another utility - Authorization by commission.** No public utility, directly or indirectly, shall acquire the stock, membership interest, or business of any other corporation or limited liability company incorporated for or organized for or engaged in the same or a similar business or proposing to operate or operating under a franchise from the same or any other authority unless authorized to do so by the commission. No such transaction shall be binding upon the public without the approval of the commission.

**49-04-07. Unreasonable preferences or advantages prohibited.** No public utility shall make or give any undue or unreasonable preference or advantage to any particular person,

company, firm, corporation, limited liability company, or locality, or to any particular character of traffic or service in any respect whatsoever, nor subject any particular person, firm, corporation, limited liability company, company, or locality, or any particular character of traffic or service to any undue or unreasonable prejudice or disadvantage in any respect. No public utility corporation, directly or indirectly, by any special rate, rebate, drawback, or other device or method, shall charge, demand, collect, or receive from any person, firm, corporation, or limited liability company a greater or less compensation for any service rendered or to be rendered than it charges, demands, collects, or receives from any other person, firm, corporation, or limited liability company for doing a like and contemporaneous service under the same or substantially similar circumstances and conditions. Nothing in this chapter shall prohibit a public utility from entering into any reasonable agreement with its customers, consumers, or employees or from providing for a sliding scale of charges, unless the same is prohibited by the terms of the franchise or permit under which such public utility is operated. No such agreement or sliding scale shall be lawful unless and until the same shall be filed with and approved by the commission.

**49-04-08. Certain discriminations allowed.** Nothing contained in this chapter shall affect:

1. The carriage, storage, or handling of property free or at reduced rates for the United States, this state, municipal governments, for charitable purposes, or to and from fairs and expositions for exhibition, or for the employees of the common carrier and their families, or private property or goods for the family use of employees of the carrier.
2. The giving by a common carrier of a preference as to time of shipment of livestock, uncured meats, and other perishable property.
3. The prescribing of a less rate per one hundred pounds [45.36 kilograms] in a carload lot than is charged, collected, or received for the same kind of freight in less than a carload lot.

**49-04-09. Long and short hauls.** It shall be unlawful for any common carrier to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of a like kind of freight or property, for a shorter than for a longer distance, all or any portion of the shorter haul being included within the longer. A common carrier shall charge no more for transporting passengers or freight to or from any point than a fair and just rate as compared with the price it charges for the same kind of transportation to or from any other point. All the provisions of this section shall apply to the transportation of passengers and all kinds of freight and property shipped and transported over one or more connecting lines. Such connecting lines shall transfer car lots without extra compensation, and shall transfer less than car lots at actual cost for such transfer. Rates shall be made and published by connecting lines for continuous shipment upon demand of any shipper or shippers and such rates so made by two or more connecting lines shall be no greater in the aggregate than the rate would be if shipped continuously upon one line of road. The commission may, upon application by a common carrier, permit and prescribe the extent to which any such carrier may be relieved from the operation of the principles contained in this section.

**49-04-10. Freight pooling.** It shall be unlawful for any common carrier to enter into any contract, agreement, or combination with any other common carrier for the pooling of freight of different and competing common carriers, or to divide between them the aggregate or net proceeds of the earnings of such carriers or any portion thereof. In any case of an agreement for the pooling of freights, each day of its continuance shall be deemed a separate offense.

**49-04-11. Free passes restricted.** Repealed by S.L. 1975, ch. 431, § 9.

**49-04-12. Free transportation authorized in certain cases.** Repealed by S.L. 1975, ch. 431, § 9.

**49-04-13. Definitions.** Repealed by S.L. 1975, ch. 431, § 9.

**49-04-14. Penalty for issuing free passes.** Repealed by S.L. 1975, ch. 431, § 9.

**49-04-15. Public utility tax report - Furnished to commission on request.** Upon request of the commission, a public utility shall furnish to the commission a verified copy of the public utility's tax reports filed by it with the state tax commissioner. Such tax reports shall be admissible in evidence before the commission in any matter or proceeding or in any action or proceeding in any of the courts of this state.

**49-04-16. Orders from commission - Observance by public utility.** Every public utility shall obey and comply with each requirement of every order, decision, direction, rule, or regulation made or prescribed by the commission in any matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper in order to secure compliance with and observation of every such order, decision, direction, rule, or regulation by all of its officers, agents, and employees.

**49-04-17. Reasonable rules and regulations by public utility.** All rules and regulations made by any public utility affecting or pertaining to its rates or services to the public shall be just and reasonable.

**49-04-18. Public utility reports furnished to commission.** Every public utility shall furnish annually to the commission, at such time and in such form as the commission may require, a report in which the utility shall answer specifically all questions propounded by the commission upon or concerning which the commission may desire information to carry into effect the provisions of this title. The commission shall have the authority to require any public utility to file periodical or special reports concerning any matter about which the commission is authorized by this title to inquire or to keep itself informed, or which it is required to enforce. The reports shall be under oath when required by the commission.

**49-04-19. Security interests against transmitting utilities - Filing instruments with secretary of state.**

1. When used in this section, the term "transmitting utility" means persons, corporations, limited liability companies, or other legal entities, and lessees, trustees and receivers, now or hereafter operating, maintaining or controlling in this state equipment or facilities for the production, generation, transmission, or distribution of electric, telecommunications services, or the transmission or distribution of crude oil, gas, petroleum products, steam, or water by pipeline.
2.
  - a. Notwithstanding the provisions of sections 41-09-23, 41-09-40, 41-09-41, and 41-09-42, all filings required under the Uniform Commercial Code in order to perfect a security interest against the personal property or fixtures of a debtor transmitting utility shall be made and maintained only in the office of the secretary of state of North Dakota.
  - b. When the financing statement covers goods of a transmitting utility as herein defined which are or are to become fixtures, no description of the real estate to which such fixtures are or may become attached is required.
  - c. Filing of a financing statement against the property of a transmitting utility is effective until five years after the maturity date contained therein in the case of personal property and until fifteen years after the maturity date in the case of fixtures annexed to real property, or if no maturity date is contained therein, until released or terminated.
3. Unless displaced by the specific provisions of this section, the Uniform Commercial Code and other applicable laws remain in full force and effect and supplement the provisions of this section.



## **CHAPTER 49-04.1**

### **ACTIONS FOR BYPASSING, TAMPERING OR UNAUTHORIZED METERING**

**49-04.1-01. Definitions.** As used in this chapter, unless the context or subject matter otherwise requires:

1. "Bypassing" means the act of attaching, connecting, or in any manner affixing any wire, cord, socket, motor or other instrument, device, or contrivance to the utility supply system or any part thereof in a manner as to transmit, supply, or use any utility service without passing through an authorized meter for measuring or registering the amount of utility service.
2. "Customer" means the person responsible for payment for utility services for the premises and includes employees and agents of the customer.
3. "Tampering" means damaging, altering, adjusting, or in any manner interfering with or obstructing the action or operation of any meter provided for measuring or registering the amount of utility service passing through the meter.
4. "Unauthorized metering" means removing, moving, installing, connecting, reconnecting, or disconnecting any meter or metering device for utility service by a person other than an authorized employee or agent of a utility.
5. "Utility" means any public utility, municipally owned utility, or cooperative utility which provides electricity, gas, or water, or any combination thereof, for sale to consumers.
6. "Utility service" means the provision of electricity, gas, water, or any other service or commodity furnished by the utility for compensation.
7. "Utility supply system" includes all wires, conduits, pipes, cords, sockets, motors, meters, instruments, and all other devices used by the utility for the purpose of providing utility service.

#### **49-04.1-02. Civil action allowed.**

1. A utility may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts any of the following acts which results in loss to the utility:
  - a. Bypassing.
  - b. Tampering.
  - c. Unauthorized metering.
2. A utility may bring a civil action for damages pursuant to this section against any person who knowingly receives utility service through means of bypassing, tampering, or unauthorized metering.
3. In any civil action brought pursuant to this section, the utility is entitled, upon proof of willful or intentional bypassing, tampering, or unauthorized metering, to recover one thousand dollars or three times the amount of the actual loss, whichever is greater, caused by the bypassing, tampering, or unauthorized metering, plus all reasonable expenses and costs incurred on account of the bypassing, tampering, or unauthorized metering. Reasonable expenses and costs include expenses and

costs for investigation, disconnection, reconnection, service calls, employees and equipment, expert witnesses, costs of the suit, and reasonable attorneys' fees.

**49-04.1-03. Disputable presumptions of bypassing, tampering, or unauthorized metering.**

1. It is a disputable presumption that a tenant or occupant of premises where bypassing, tampering, or unauthorized metering occurred, caused or had knowledge of the bypassing, tampering, or unauthorized metering if the tenant or occupant had access to the part of the utility supply system on the premises where the bypassing, tampering, or unauthorized metering occurred, and if the tenant or occupant was responsible or partially responsible for payment, either directly or indirectly, to the utility or to any other person for utility service to the premises.
2. It is a disputable presumption that a utility customer at premises where bypassing, tampering, or unauthorized metering occurred, caused or had knowledge of the bypassing, tampering, or unauthorized metering if the customer controlled access to the part of the utility supply system on the premises where the bypassing, tampering, or unauthorized metering occurred.

**49-04.1-04. Reservation.** This chapter does not limit or control any other statutory rights or claims for relief which may be brought by a utility.

## **CHAPTER 49-05**

### **PROCEDURE ON REGULATION OF PUBLIC UTILITIES**

**49-05-01. Who may make a complaint.** Complaint may be made by the commission on its own motion, or by any person or association, by petition or complaint in writing, setting forth any fact or thing done or omitted to be done by any public utility, including any rule, regulation, or rate established or fixed by or for any public utility, in violation or claimed violation of any provision of law or any order or rule of the commission.

**49-05-02. Right to make certain complaints limited.** No complaint as to the reasonableness of any rates or charges of any heat, gas, electrical, water, or telecommunications utility shall be entertained by the commission except when made upon its own motion, unless the same is signed by the governing body of the county or city, if any, within which the alleged violation occurred, or by not less than ten percent of the consumers or purchasers of such heat, gas, electrical, water, or telecommunications service.

**49-05-03. Hearing on complaint.** The commission shall fix the time and place of hearing upon any complaint and shall serve notice thereof upon the complainant and the utility affected thereby. Such notice shall be given and proceedings shall be conducted as provided by chapter 28-32.

**49-05-04. Application for increase of rates - Information required.** Any public utility requesting an increase in its rates above the maximum approved or prescribed by the commission shall furnish the commission:

1. The original cost of all its property.
2. The date of the acquisition of said property.
3. The amount of money invested in said property.
4. The amount of stock outstanding.
5. The amount of bonds outstanding against said property.
6. All books, papers, and memoranda of the utility showing the financial condition thereof.
7. Its total monthly salaries and wage expense for such time as the commission may request.
8. An itemized statement of its expenditures.
9. The details of its profit and loss account.
10. All other books, papers, vouchers, and accounts which the commission shall ask to have produced as evidence at the hearing.

#### **49-05-04.1. Test year - Public utility rate filings.**

1. A public utility, at its option, may use any one of the following twelve-month periods as its test year for rate filings with the commission:
  - a. A historical test year, which may be either the latest twelve-month period for which actual data is available at the time of filing new schedules or the latest

calendar or fiscal year for which actual data is available at the time of filing new schedules.

- b. A current test year, which is any consecutive twelve-month period ending not later than twelve months after the date new schedules are filed. A public utility selecting a current test year also shall file data for the twelve-month period immediately preceding the current test year selected and that period is the "historical period" for the public utility.
    - c. A future test year, which is any consecutive twelve-month period ending no later than twenty-four months after the date new schedules are filed. A public utility selecting a future test year must file data for the twelve consecutive months immediately preceding the future test year and that period is the "current period" for the public utility.
  2. A public utility selecting a current or future test year shall present the following information:
    - a. A comparison of forecast data to historical period data to demonstrate the reliability and accuracy of the utility's forecast including a comparison of the prior years' forecast or budgeted data to actual data for those periods.
    - b. A statement that the public utility's forecast is reasonable, reliable, and was made in good faith and that all basic assumptions used in making or supporting the forecast are reasonable, evaluated, identified, and justified to allow the commission to test the appropriateness of the forecast.
    - c. A statement that the accounting treatment that has been applied to anticipated events and transactions in the forecast is the same as the accounting treatment to be applied in recording the events once they have occurred.
  3. The public utility may update its filing for material changes as actual data becomes available up to thirty days before the hearing. Except for good cause shown, a public utility may not submit more than one updated filing before the hearing. In the absence of an updated filing by the public utility, the commission may require a public utility to update its filing when the commission staff introduces evidence that a material change has occurred.
  4. A public utility may propose estimated or calculated adjustments to the selected historical or current test year for all known and measurable changes in operating results as measured in the test year. The adjustments must be made in the same context and format as the information was provided in the original filing. The adjustments may reflect material changes in plant investment, operating revenues, expenses, and capital structure if the changes occurred during the selected historical or current test year or are reasonably certain to occur subsequent to the selected test year within twelve months from the date of the rate filing.

**49-05-05. Changes in tariff rates - Notice to commission - Filing fee.** No change shall be made by any public utility in any tariffs, rates, joint rates, fares, tolls, schedules, classifications, or service which have been filed and published by any public utility, except after thirty days' notice to the commission. The notice shall state plainly the changes proposed and except for services must be accompanied by a fifty dollar filing fee. The commission, for a good cause shown, may allow changes upon less than the notice herein specified, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

**49-05-06. Hearing by commission on proposed change of rates.** Whenever a notice or any schedule stating an individual or joint rate, classification, contract, practice, or rule, increasing or decreasing, or resulting in an increase or decrease in any rate, is filed with the commission, the commission may suspend by motion the rate, classification, contract, practice,

or rule but the period of suspension may not extend more than seven months beyond the time when it otherwise would go into effect. Upon complaint or upon its own initiative without complaint the commission may order a hearing, upon due notice, concerning the propriety of the rate, classification, contract, practice, or rule. On such hearing, the commission shall establish the rates, classifications, contracts, practices, or rules proposed, in whole or in part, or others in lieu thereof, which it finds to be just and reasonable. At any such hearing, the burden to show that the increased rate or proposed change of rate, classification, rule, or practice is just and reasonable is upon the public utility applying for the increase. All such rates, classifications, contracts, practices, or rules, not suspended, on the expiration of thirty days from the time of filing with the commission, or of such lesser time as the commission may grant, become effective rates, classifications, contracts, practices, or rules, subject to the power of the commission, after a hearing had on its own motion or upon complaint, to alter or modify the same.

**49-05-07. Immunity from prosecution for self-incrimination.** No person subpoenaed or ordered shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in any investigation or inquiry by or hearing before the commission or any commissioner upon the ground that the testimony or evidence required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. No person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any act, transaction, matter, or thing concerning which the person is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence. The provisions of this section shall not exempt any person from prosecution or punishment for perjury. Nothing herein contained shall be construed as in any manner giving to any public utility immunity of any kind.

**49-05-08. Orders and decisions of commission - Conclusive.** In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive.

**49-05-09. Decisions of commission - Rescission or amendment.** The commission, at any time, upon due notice to the public utility affected and after opportunity to be heard as provided in the case of complaints, may rescind, alter, or amend any decision made by it. Any order rescinding, altering, or amending a prior order or decision, when served upon the public utility affected, shall have the same effect as an original order or decision.

**49-05-10. Improper action taken by utility - Damages - Who may sue - Recovery.** In case any public utility shall do, cause to be done, or permit to be done, any act, matter, or thing prohibited, forbidden, or declared to be unlawful, or shall omit to do any act, matter, or thing required to be done, either by the constitution, any law of this state, or any order or decision of the commission, such public utility shall be liable to the persons, corporations, or limited liability companies affected thereby for all loss, damages, or injury caused thereby or resulting therefrom. If the court shall find that the act or omission was willful, the court, in addition to the actual damages, shall award damages for the sake of example and by way of punishment. An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation, limited liability company, or person. No recovery under this section in any manner shall affect a recovery by the state of the penalties provided in this title or the power to punish for contempt.

**49-05-11. Orders issued by commission - Period remaining in force.** Every order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in such order or until revoked or modified by the commission, unless the same is suspended, modified, or revoked by order or decree of a court of competent jurisdiction.

**49-05-12. Appeal from decision of commission.** Any party to any proceeding heard by the commission feeling aggrieved by the decision or by the entry of any final order of the commission therein may appeal therefrom to the district court in the manner prescribed in chapter 28-32.

**49-05-13. Suspension of order on appeal only by order of court.** Repealed by omission from this code.

**49-05-14. Stay on appeal - Suspending bond - Impounding excess charges.** In case the order or decision of the commission is stayed or suspended, the order of the court shall not become effective until a suspending bond first shall have been executed and filed with and approved by the district court, payable to the state of North Dakota, and sufficient in amount and security to ensure the prompt payment, by the party appealing, of all damages caused by the delay in the enforcement of the order or decision of the commission and of all the moneys which any person, corporation, or limited liability company may be compelled to pay, pending the appeal, for transportation, transmission, product, commodity, or service in excess of the charges fixed by the order or decision of the commission, in case said order or decision is sustained. The district court, in case it stays or suspends the order or decision of the commission in any matter affecting rates, also by order shall direct the public utility affected to pay into court, from time to time, there to be impounded until the final decision of the case, or into some bank or trust company paying interest on deposits, under such conditions as the court may prescribe, all sums of money which it may collect from any corporation, limited liability company, or person in excess of the sum which such corporation, limited liability company, or person would have been compelled to pay if the order or decision of the commission had not been stayed or suspended. Upon a final determination of an appeal, the court shall make an appropriate order disposing of the impounded funds in accordance with such determination. In the event the public utility shall fail to comply with the conditions of the stay bond, the commission may sue thereon for the use and benefit of the patrons or others who have suffered damage by reason of the stay.

**49-05-15. Appeals to supreme court.** The commission, the public utility, the complainant, or any other interested person, after the entry of judgment in the district court upon an appeal from the order of the commission, may prosecute an appeal to the supreme court of this state. Such appeal shall be taken as prescribed in chapter 28-32.

## **CHAPTER 49-06**

### **VALUATION OF PUBLIC UTILITY PROPERTY**

#### **49-06-01. Valuation of property as basis for determining reasonableness of rates.**

The commission, for the purpose of ascertaining just and reasonable rates and charges of public utilities, or for any other purpose authorized by law, shall investigate and determine the value of the property of every public utility, except railroads and motor carriers, used and useful for the service and convenience of the public, excluding therefrom the value of any franchise or right to own, operate, or enjoy the same in excess of the amount, exclusive of any tax or annual charge, actually paid to any political subdivision of the state as a consideration for the grant of the franchise or right, and exclusive of any value of the right by reason of a monopoly or merger. The commission shall prescribe the details of the inventory of the property of each public utility to be valued.

**49-06-02. Value of property for ratemaking purposes - Determination.** The value of the property of a public utility, as determined by the commission for ratemaking purposes, is the money honestly and prudently invested therein by the utility including construction work in progress for new facilities that use lignite mined in this state to generate electricity, as well as additions or modifications to existing lignite facilities, less accrued depreciation. The commission shall allow a public utility for those new or existing facilities utilizing lignite mined in this state as its primary fuel:

1. To recover its research and development costs incurred to develop lignite more cleanly, efficiently, or economically, including a reasonable rate of return on capital expenditures; and
2. To recover its incremental costs of complying with federal environmental laws, including a reasonable rate of return on capital expenditures. The commission may allow these costs to be recovered by an environmental surcharge that may be added to existing rates.

**49-06-03. Value of goodwill not to be considered in ratemaking.** The value of public utility property for ratemaking purposes shall not include or be affected by goodwill value, going concern value, or franchise value in excess of payments made therefor.

**49-06-04. Fair market price to be allowed in fixing valuations.** The commission, in determining the rates to be charged by any utility under its jurisdiction, shall ascertain whether an advanced or fictitious cost price, or a price in excess of the fair market value of any commodity, machinery, equipment, material, or service has been paid or is being paid or charged, by the public utility. If it shall appear that any such fictitious or advanced price has been or is being paid or charged, the commission shall fix and allow as a part of the valuation or rate basis only the reasonable and fair market price of such items, at the time of the purchase, eliminating all such fictitious or excessive prices or values.

**49-06-05. When valuation or revaluation required.** The commission, upon its own motion, may, and, upon a petition for a valuation or revaluation of the property of a public utility, including necessary audits, for the purpose of determining the rate to be charged for the service rendered, signed by twenty-five percent of the patrons or customers of such public utility, shall, endeavor to arrive at a reasonable rate through negotiations with the public utility. If within thirty days after the filing of the petition, or within thirty days after the adoption of an order or resolution by the commission on its own motion, they are unable to agree upon a new rate which shall be not less than fifteen percent less than the rate in force at the time of the filing of said petition, or the adoption of the order or resolution, the commission shall proceed with a valuation or revaluation of the properties of the public utility involved in the manner provided by this chapter. Each person, firm, corporation, or limited liability company receiving service is to be considered a patron or customer within the purview of this chapter, regardless of the number of meters owned,

rented, or used by such person, firm, corporation, or limited liability company, but a firm shall be considered a separate entity from the individual members thereof.

**49-06-06. Disagreement on new rate - Bond required.** If no new rate shall have been agreed upon, as provided in section 49-06-05, then pending the investigation and final order of the commission, if it is of the opinion that public interest so requires, the commission immediately shall make an order that the utility shall file with the commission a bond of a corporate surety company, approved by the commission and authorized to do a surety business within this state. The bond shall be payable to the commission for the use and benefit of the customers and patrons of the utility and shall be conditioned that if the rates fixed, determined, and prescribed by the final order are less than the rates charged, received, and collected by the public utility during the period of the investigation, the public utility as principal shall remit to the several customers, patrons, or users of its service during the period between the date of the order directing a valuation or revaluation and the date of the final order fixing, determining, and prescribing the rates to be charged, received, and collected by the utility company the amount payable under this section. If the utility does not remit to its customers and patrons the differences between the amount paid by them and the new rate prescribed by the final order, the commission may maintain an action on the bond for the benefit of the customers and patrons. The amount to be paid and remitted to each of the several customers, patrons, or users shall be such sum as such customer, patron, or user has paid to the utility for the service over and above the amounts that such customer, patron, or user would have paid during that time had the rates fixed, determined, and prescribed in the final order been in effect during that period. The bond or undertaking shall be filed with the commission within thirty days after the service of the order upon such public utility. Service of the order may be made by personal service upon the public utility or by registered or certified mail, and if by registered or certified mail, service shall be deemed completed when the registered or certified mail is delivered to the public utility, as evidenced by the return receipt for the mail.

**49-06-07. Failure of utility to file bond - Temporary rates prescribed by commission.** If, within thirty days after the service of the order, as set forth in section 49-06-06, the public utility fails, neglects, and refuses to file a bond or undertaking with the commission, then the commission immediately shall fix, determine, and prescribe temporary rates to be charged by such public utility pending the final determination of said rate proceeding. The temporary rates, so fixed, determined, and prescribed shall be sufficient to provide a return of not less than five percent per annum upon the original cost less accrued depreciation of the physical property of said public utility used and useful in the public service. If the duly verified reports of said utility to the commission do not show the original cost, less accrued depreciation, of said property, the commission may estimate said cost less depreciation and fix, determine, and prescribe rates as hereinbefore provided. In determining the original cost or in estimating the cost as herein provided, the commission may take into consideration any report, annual or otherwise, filed with it by any utility, together with any other fact or information which the commission may acquire or receive from an investigation of the books, records, or papers of such public utility and from an inspection of its property, or from the examination of any report, annual or otherwise, made by the public utility and filed with the state tax commissioner, or any report, annual or otherwise, made by the said public utility to the federal power commission, federal communications commission, or federal securities and exchange commission.

**49-06-08. Determination of permanent rates.** Temporary rates fixed, determined, and prescribed under this chapter shall be effective until the rates to be charged, received, and collected by the public utility company shall have been fixed, determined, and prescribed finally. The commission, in any proceeding in which temporary rates are fixed, determined, and prescribed, shall consider the effect of such rates in fixing, determining, and prescribing rates to be charged and collected thereafter upon the final determination of the rate proceeding.

**49-06-09. Utility to remit to consumer if rate lower than temporary rate.** If the final rates fixed, determined, and prescribed are less than the temporary rates fixed under the provisions of section 49-06-07, the public utility shall pay or remit to each of the several customers, patrons, or users such sum as such customer, patron, or user has paid to the said utility for the said service over and above the amounts that would have been paid during such



time had the rates fixed, determined, and prescribed in the final order been in effect during the period that the temporary rates were in effect.

**49-06-10. Valuation - Notice - Finality - Prima facie evidence.** The commission, whenever it shall have completed a valuation of the property of any public utility and before such valuation shall have become final, shall give notice by registered or certified mail to such public utility. If, within thirty days after such notice, no protest shall have been filed with the commission, then said valuation shall become final. If notice of protest shall have been filed by such public utility, the commission shall fix the time of hearing the same and shall consider at such hearing any matter material thereto presented by such public utility in support of its protest. If, after the hearing of any protest, the commission shall be of the opinion that its inventory is incomplete or incorrect or that its valuation is incorrect, it shall make such changes as may be necessary and shall issue an order making such corrected valuation final. The final valuation by the commission and all classifications made for the ascertainment of such valuations shall be public and shall be prima facie evidence relative to the value of the property.

**49-06-11. Hearings as to valuations - Called by commission.** For the purpose of ascertaining the reasonableness and justice of the rates and charges of public utilities, or for any other purpose authorized by law, the commission may cause a hearing to be held in the manner prescribed in chapter 28-32 to determine the value of the property of any public utility actually used or useful for the convenience of the public, excluding therefrom the value of any franchise or right to own, operate, or enjoy the same in excess of the amount, exclusive of any tax or annual charge, actually paid to any political subdivision of the state as a consideration of such franchise or right, and exclusive of any value of the right by reason of a monopoly or merger.

**49-06-12. Notice of hearing - Preliminary examination.** Before any hearing is had, the commission shall give the public utility affected thereby at least twenty days' written notice, specifying the time and place of said hearing. This provision shall not prevent the commission from making any preliminary examination or investigation into the matters herein referred to or from inquiring into such matters in any other investigation or hearing.

**49-06-13. Hearing - Right of public utility - Evidence - Findings - Review.** Any public utility affected shall be entitled to be heard and to introduce evidence at such hearing. The commission is empowered to resort to any other source of information available. The evidence introduced at such hearing shall be reduced to writing and certified under the seal of the commission. The commission shall make and file its findings of fact in writing upon all matters concerning which evidence shall have been introduced before it which, in its judgment, have a bearing on the value of the property of the public utility.

**49-06-14. Findings of commission - Admissible as evidence.** The findings of the commission, as made and filed, when properly certified by the commission, shall be admissible as evidence in any proceeding or hearing before the commission or any court in which the commission, the state, or any officer, department, or institution thereof, or any county, city, municipality, or other body politic and the public utility affected thereby, may be interested, whether arising under the provisions of this chapter or otherwise. Such findings, when so introduced, shall be conclusive evidence of the facts therein stated as of the date therein stated under conditions then existing and such facts can be controverted only by showing a subsequent change in conditions bearing upon the facts therein determined.

**49-06-15. Corrections and revaluation of public utility property.** The commission, upon the making of a valuation, shall:

1. Keep itself informed through its experts and other assistants of all extensions and improvements or other changes in the conditions and value of the property of the public utility;
2. Ascertain the value of such extensions, improvements, and changes; and
3. Revise and correct, from time to time, its valuation of such property.

**49-06-16. Additional hearings of commission.** The commission from time to time may cause any further hearing and investigation to be had for the purpose of making a revaluation or ascertaining the value of any betterments, improvements, additions, or extensions made by a public utility subsequent to any hearing or investigation, and may examine into all matters which may change, modify, or affect any findings of fact previously made and at such time may make findings of fact supplementary to those theretofore made. Such a hearing shall be had upon the same notice and shall be conducted in the same manner as an original hearing. Any supplementary finding shall have the same force and effect as an original finding, and shall be considered in connection with the original findings and, so far as may be necessary, as a modification thereof.

**49-06-17. Limitation on number of valuation or revaluation orders.** No order for valuation or revaluation shall be made more than once in every three years after a determination of value has become final. This limitation, however, shall not apply to proceedings to determine past excess earnings for refunding purposes.

**49-06-18. Employment of experts - Attorneys - Costs of hearing.** Repealed by S.L. 1993, ch. 1, § 35.

**49-06-19. Additional costs to be paid - Refund.** Repealed by S.L. 1993, ch. 1, § 35.

**49-06-20. Amount not paid to draw interest - Attorney general to collect.** Repealed by S.L. 1993, ch. 1, § 35.

**49-06-21. Writs of attachment and garnishment summons to be issued.** Repealed by S.L. 1993, ch. 1, § 35.

**49-06-22. Public utility valuation fund - Use.** Repealed by S.L. 1993, ch. 1, § 35.

**49-06-23. Expenses of valuation or revaluation paid into public utility valuation revolving fund.** Repealed by S.L. 1993, ch. 1, § 35.

**49-06-24. When electric rates not to be increased.** The commission may not increase electric rates as a result of actions taken by other states requiring higher cost resources to be built, purchased, or otherwise acquired as a result of the application of quantified environmental externality values, as defined in section 49-02-23, as part of any resource selection process.

## **CHAPTER 49-07 PENAL PROVISIONS**

**49-07-01. Violation of commission order or rule - Penalty.** Any person who violates or fails to comply with any provision of this title, or who fails, omits, or neglects to obey, observe, or comply with any order, decision, decree, rule, direction, demand, or requirement of the commission, or any part or provision thereof, in a case in which no other penalty has been provided, shall be guilty of a class A misdemeanor.

**49-07-01.1. Violation of statute, commission order, or commission rule - Assessment of civil penalty.** Any person who violates any statute, commission order, or commission rule which applies to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, 24-09, and 32-25, titles 60 and 64, and title 49 except for chapter 49-22, shall, in addition to any other penalty provided, be subject to a civil penalty of not to exceed five thousand dollars. The civil penalty may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

**49-07-02. Each violation a separate offense.** Repealed by S.L. 1975, ch. 106, § 673.

**49-07-03. Act of officer or agent that of principal.** In construing and enforcing the provisions of this title relating to penalties, the act, omission, or failure of any officer, agent, or employee of any public utility, acting within the scope of that person's official duties or employment, in every case shall be deemed to be the act, omission, or failure of such public utility.

**49-07-04. Personal liability of officer, agent, or employee - Penalty.** Repealed by S.L. 1975, ch. 106, § 673.

**49-07-05. Liability of persons other than public utility - Penalty.** Repealed by S.L. 1975, ch. 106, § 673.

**49-07-05.1. Violations of pipeline safety standards - Penalties.** Any person who violates any rule or order issued by the commission pursuant to section 49-02-01.2 is subject to a civil penalty to be imposed by the commission of not to exceed ten thousand dollars for each such violation for each day that such violation persists, except that the maximum penalty may not exceed five hundred thousand dollars for any related series of violations. Any such civil penalty may be compromised by the commission. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the person charged, the nature, circumstances, and gravity of the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, the ability to pay the penalty, the good faith of the person charged in attempting to achieve compliance, after notification of a violation, and such other matters as justice may require must be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the state of North Dakota to the person charged or may be recovered in a civil action in the district court of Burleigh County.

**49-07-06. Cumulative penalties - Not a bar to contempt.** All penalties accruing under this title shall be cumulative and a suit for the recovery of one penalty shall not:

1. Bar nor affect the recovery of any other penalty or forfeiture; nor
2. Bar any criminal prosecution against any public utility or any officer, manager, director, governor, agent, or employee thereof, or any other corporation, limited liability company, or person; nor

3. Bar the power to punish for contempt.

**CHAPTER 49-08**

**RAILROAD CORPORATIONS**

[Repealed by S.L. 1975, ch. 431, § 9]

## **CHAPTER 49-09**

### **ACQUIRING AND TRANSFERRING UTILITY PROPERTY**

**49-09-01. Right of way through state lands - Conditions.** Every railroad corporation duly organized under the laws of any state or territory, or of the United States, and authorized to build and operate a railroad within this state, which shall have filed with the secretary of state a copy of its articles of incorporation, properly certified, shall have the right to take, hold, and use for the purposes of a railroad a strip of land one hundred feet [30.48 meters] wide, fifty feet [15.24 meters] on each side of the centerline of such railroad, through each and every tract of public land owned or held by the state across which its road shall be located or constructed. When it shall be necessary to protect such railroad from snow, or to use extra width in its construction, such corporation shall have the right to take, hold, and use a strip of land not exceeding two hundred feet [60.96 meters] in width, one hundred feet [30.48 meters] on each side of such centerline, through such public lands. At all its regular stations established upon such land, such company shall have the right to take a strip of land one thousand six hundred feet [487.68 meters] long and three hundred feet [91.44 meters] wide for station purposes.

**49-09-02. School lands to be taken at appraised value.** Whenever any school or state lands are taken for railway purposes as provided in section 49-09-01, the railway corporation taking such lands shall pay to the state treasurer the appraised value thereof but in no case any sum less than ten dollars per acre [.40 hectare] for all such lands so taken.

**49-09-03. How right of way obtained from board of university and school lands.** Any railway company desiring to secure the benefits of section 49-09-01, within ninety days after the definite location of its road across any section of such lands, shall file in the office of the board of university and school lands a plat of such section of land, showing the location of such road through the same and all stations located thereon. Thereafter all such lands over which such roads shall pass shall be disposed of subject to such grant and every certificate or patent for such lands thereafter sold shall contain an express reservation to the use of such corporation of all lands which it shall have appropriated in accordance with the provisions of this chapter. If such road shall not be completed across any such section within five years after the location of the same thereon, the rights herein granted shall be forfeited as to such section.

**49-09-04. When right of way reverts to state.** If any railway corporation appropriating any public lands by virtue of section 49-09-01 at any time shall abandon the use thereof for railway purposes for a period of one year, the same shall revert to the state.

**49-09-04.1. Abandonment of railway lines - Public service commission authority - Trust agreement - Term - Reversion of property.** Repealed by S.L. 1997, ch. 284, § 8.

**49-09-04.2. Abandoned railroad right of way - Sale.**

1. When service is discontinued on any railroad right of way in the state and the property is offered for sale, lease, exchange, or other disposal by the railroad or an affiliated entity, the property must first be offered for public purposes.
2. If right-of-way property along abandoned rail lines is first offered for public purposes and refused, the lessee operators of grain and potato warehouses located on the property must be given the next option to purchase, lease, exchange, or otherwise acquire the property described in their lease. Adjoining agricultural landowners must thereafter be given the next option to acquire the property adjoining their land.
3. When abandoned railroad right of way is offered for wildlife programs or projects, the proposed acquisitions must first be approved by the board of county commissioners of the county or counties in which the right of way is located under section

**49-09-04.3. Abandoned railway lines - Removal of abandoned materials - Charge by city, county, or state.** Unless otherwise allowed by the commission, any railroad corporation abandoning the use of any railway line in this state shall remove and clear all rail, ties, materials, supplies, and debris from, and shall control noxious weeds on, the railway line right of way within a reasonable time. On request of a city or county in which there is an abandoned line, the commission shall require the railroad corporation, as to railway line right of way in that city or county, within a reasonable time, to take the action required by this section. On request of any state agency having an interest in any property abutting an abandoned railway line right of way, the commission shall require the railroad corporation, as to that railway line right of way, within a reasonable time, to take the action required by this section. The commission shall take all action necessary and appropriate, including the adoption of rules under chapter 28-32, to enforce this section. If a railroad corporation fails to take action required by this section, the requesting entity may do the work on the parts of the abandoned railway line right of way under that entity's jurisdiction. A county may do the work on the parts of the abandoned railway line right of way in the county, regardless of whether those parts are inside city limits. The entity doing the work may charge the railroad corporation the reasonable expense of doing the work. If the charges remain unpaid after ninety days, the entity may certify to the county auditor the amount of the charges imposed under this section. These charges become part of the taxes levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes and placed to the credit of the jurisdiction entitled to the charges. The taxpayer's right to appeal the assessment is governed by chapter 57-23.

**49-09-04.4. Railroad abandonment - Records to be open to commission.** A railway corporation or railroad holding company having identified a railroad line in North Dakota for abandonment pursuant to 49 U.S.C. 10904(e)(2)(B) shall provide the commission or its designated representatives with access to all records directly relating to the railroad line to be abandoned so an accurate assessment can be made of the line's revenues, profits, and losses. After notice of intent to abandon is given to the governor by the railway corporation or railroad holding company, the commission or its representatives may examine the railway corporation's or railroad holding company's records that are directly related to the railroad line to be abandoned to determine the accuracy of the claims concerning the railway line and to determine whether an abandonment protest should be filed with the surface transportation board.

**49-09-05. Securing right of way over land of decedent or ward.** Repealed by S.L. 1997, ch. 284, § 8.

**49-09-06. Petition for right of way over land of decedent or ward.** Repealed by S.L. 1973, ch. 257, § 82.

**49-09-07. County court to approve petition for right of way over land of decedent or ward - Conveyance.** Repealed by S.L. 1973, ch. 257, § 82.

**49-09-08. Trust deeds and mortgages of railroad property.** Repealed by S.L. 1997, ch. 284, § 8.

**49-09-09. Sale under trust deed or upon mortgage foreclosure.** Repealed by S.L. 1997, ch. 284, § 8.

**49-09-10. Title acquired under sale.** Whenever the persons securing title under a trust deed or mortgage foreclosure sale shall own or represent a majority in amount of the bonds or other evidences of debt secured by any such trust deed or mortgage, and also shall include the persons who owned a majority in amount of the capital stock of such mortgagor corporation at the time of the sale, such purchasers and such corporation as they shall organize also shall have, possess, and enjoy any exemption, privilege, or immunity previously granted by any law to such former corporation relating to any of the property so acquired to the same extent as if such latter corporation had been named in such law as the grantee thereof.

**49-09-10.1. Identification of railroad rights of way - Duties of commission.**  
Repealed by S.L. 1989, ch. 569, § 3.

**49-09-10.2. Identification of right of way to be acquired, leased, or transferred.**

1. Each carrier or other entity intending to acquire, lease, or transfer an operating railroad right of way shall file a notice of intent to do so with the commission, if any of the following applies:
  - a. The acquisition or lease would be by a party that is not a railroad carrier and would be of rail property that would be operated by a third party.
  - b. The operation would be by a new carrier and of rail property acquired or leased by a third party.
  - c. There would be a change of operators on the line.
2. The notice required under subsection 1 must designate the complete private or corporate identity of the acquiring or leasing party, the complete identity of the divesting carrier, and a thorough description of the line involved. The notice must include financial information as to the acquiring or leasing entity. These documents are confidential and may not be divulged by the commission to any party.
3. An acquiring, leasing, or divesting carrier shall attend conferences with the commission on reasonable notice, and shall respond to all questions and requests for information which are reasonably related, or may lead to information reasonably related, to the issue of whether the proposed transaction is consistent with law.

**49-09-11. Compensation for another railroad's property - Determined according to law of eminent domain.** If railroad corporations cannot agree upon an adjustment and the amount of compensation to be paid for the purchase of necessary change of location and removal of any track previously laid, the same shall be ascertained and determined and the common, mutual, and separate rights shall be adjusted in the manner provided by law for the ascertainment and determination of damages for the taking of real property. The court may employ a competent engineer to define, locate, and plat the ground and assign to each corporation the part for the tracks and other conveniences for each and may require the removal or purchase of tracks previously laid so as justly to settle the rights of such corporation upon such ground, the damages to be paid being assessed in accordance with the law on eminent domain.

**49-09-11.1. Negotiations for reopening of railway line - Railroad intending to abandon line.** Repealed by S.L. 1997, ch. 284, § 8.

**49-09-11.2. Negotiations for reopening of railway line - Railroad abandoning line.** Repealed by S.L. 1997, ch. 284, § 8.

**49-09-11.3. Negotiations for sale, transfer, or lease of railroad property - Public service commission authority.** Repealed by S.L. 1997, ch. 284, § 8.

**49-09-11.4. Commission's authority in public interest - Cooperation with other states.** Repealed by S.L. 1997, ch. 284, § 8.

**49-09-11.5. Interstate commerce commission certificate.** Repealed by S.L. 1997, ch. 284, § 8.

**49-09-11.6. Public service commission authorized to conduct periodic meetings concerning future operation of railroads.** Repealed by S.L. 1997, ch. 284, § 8.

**49-09-11.7. Rules for enforcement.** Repealed by S.L. 1997, ch. 284, § 8.



**49-09-12. Sale of railroad equipment under security agreement - How property marked.** Repealed by S.L. 1975, ch. 431, § 9.

**49-09-13. Conditional sale contract - Filing - Marking property.** Repealed by S.L. 1965, ch. 296, § 32.

**49-09-14. Utility property transfers filed with secretary of state.** Every general conveyance, lease, deed of trust, mortgage, assignment, or satisfaction thereof, made by any public utility, corporation, or limited liability company of any franchise, right of way, real estate, fixtures, poles, wires, pipes, conduits, and general equipment used in carrying on the business of a public utility in pursuance of law shall be executed and acknowledged in the manner in which a conveyance of real estate by a corporation or a limited liability company is required to be executed and acknowledged to entitle a copy of the same to be filed. A copy shall be filed in the office of the secretary of state, who shall issue the secretary of state's certificate specifying the day and hour of its reception and where filed, and such certificate shall be evidence of the fact of filing. Every such filing of any copy of the instrument, from the time of reception, shall have the same effect as to any property in this state described therein as the record of any similar instrument in the office of a register of deeds may have by law as to property in the county in which such register of deeds holds office and shall be notice of the rights and interests of the grantee, lessee, or mortgagee to the same extent as if it were recorded in each of the several counties in which any property therein described may be situated.

**49-09-15. Conveyance of real property other than right of way - Recording.** Every such conveyance, lease, deed of trust, or mortgage, made by a public utility which covers any real property other than that used by such public utility as a right of way for its railway, telecommunications lines, or gas or oil pipelines, also must, in order to obtain the priority created by section 47-19-41, be recorded in the office of the register of deeds for each county wherein such other real estate, or any part thereof, is situated.

**49-09-16. Right of way - Telecommunications - Electric light - Gas and oil pipeline systems.** The governing board of any municipal corporation may grant to any person who is a resident of this state, to any corporation or limited liability company organized under the laws of this state, or to any corporation or limited liability company licensed to do business within this state the right of way for the construction and operation of a railway, telecommunications line, electric light system, or a gas or oil pipeline system over or upon any public grounds, streets, alleys, or highways under the care or supervision of the board granting such right of way. Such right of way shall be granted subject to such conditions, restrictions, and regulations as may be prescribed by the board granting the same, relative to the streets, alleys, or highways upon, over, under, or across which the way, line, or system shall be built and operated.

**CHAPTER 49-10**

**FUEL RATES**

[Repealed by S.L. 1987, ch. 566, § 1]

## **CHAPTER 49-10.1**

### **RAILROAD REGULATION BY PUBLIC SERVICE COMMISSION**

**49-10.1-01. Authority of public service commission.** The commission, to the extent not inconsistent with federal law, may regulate railroads within this state to the extent railroad activities constitute intrastate commerce. The commission may represent the state interests in direct negotiations with rail carriers and in proceedings before Congress, federal agencies, and courts.

**49-10.1-02. Public policy concerning the regulation of railroads.** All railroads are common carriers affected with a public interest and subject to regulation as prescribed by this chapter and other applicable provisions of law. The commission, to the extent not inconsistent with federal law, shall regulate railroads to ensure that all rates, facilities, and services are just and reasonable, and are not unduly discriminatory, unduly or unreasonably prejudicial, nor unduly or unreasonably preferential.

**49-10.1-03. Regulatory powers.** The commission shall regulate all railroads carrying property or passengers within this state. The commission, to the extent not inconsistent with federal law, shall:

1. Prevent unfair competition, unjust discrimination, or undue or unreasonable preferences between shippers or consignees by lines of competing railroads.
2. Require the filing of reports and data by railroads as the commission may determine to be necessary to allow it to carry out its regulatory functions under this chapter and other provisions of law.
3. Regulate railroads in all matters affecting the relations between railroads and the public to the end that this chapter may be fully and completely carried out.

**49-10.1-04. Equipment distribution.** Repealed by S.L. 1997, ch. 284, § 8.

**49-10.1-05. Railroad police.** Railroad police officers who are designated by a railroad to be licensed under the laws of this state, while engaged in their employment with the railroad, have the authority of a "law enforcement officer" pursuant to subsection 17 of section 12.1-01-04 for the purpose of arresting any person committing a felony on railroad property or associated with railroad equipment, or to arrest a person committing a misdemeanor involving railroad property or relating to persons or property being transported by the railroad, or awaiting transportation by the railroad, and have the power of removing an individual from a train who has no right to be there, or who is engaging in a conduct prohibited by title 12.1.

**49-10.1-06. Loading platforms.** Repealed by S.L. 1997, ch. 284, § 8.

**49-10.1-07. Spur tracks.** On a finding by the commission that public convenience and necessity so require it, a railroad shall be required to build a spur track to serve elevators, warehouses, mills, or like structures, at the expense of the party desiring the spur track to be built. The person desiring the construction of said spur track may be required by the railroad to deposit the estimated cost of the spur track with the commission before the railroad can be required to construct said spur track. The person desiring said spur track may be charged a monthly charge by the railroad for the cost of maintaining the spur track and the switch.

**49-10.1-08. Tampering, altering, or damaging railroad property - Penalty.** Every unauthorized person who unlawfully tampers with, alters, or damages any railroad track, track mechanism, or signal, semaphore, or sign, or masks any light or signal, or exhibits any false light or signal with intent to endanger any person or damage property, shall be guilty of a class C felony.

**49-10.1-09. Shipment of livestock.** Repealed by S.L. 1997, ch. 284, § 8.

**49-10.1-10. Use of railroad tracks for highway purposes - Penalty.** No unauthorized person shall drive any vehicle or animal upon or use any railroad track and right of way in this state as a highway. This section shall not apply to highway or private crossings over any line of railway in the state, nor to depot grounds, station grounds, nor switches, sidetracks, and right of way intended for the use of railroad employees, shippers, or the consignees of freight. Any person violating the provisions of this section is guilty of a class B misdemeanor.

**49-10.1-11. Minor excluded from railroad property - Exception.** A person under fifteen years of age, unless accompanied by a parent or guardian or unless the person has business with the railroad requiring the person to approach such place, shall not:

1. Approach closer than ten feet [3.05 meters] from any engine, car, train, or other rolling stock upon the tracks of any railroad in this state.
2. Enter any roundhouse, shop, or yard or upon any track bridge of any railroad company or upon the right of way or other place of danger owned by any railroad.

**49-10.1-12. Trespassing and stealing rides on cars, engines, and trains - Penalty.**  
No person shall:

1. Enter, ride, or secure passage upon a railroad car or engine of any description other than a car commonly used exclusively for the carriage of passengers with intent thereby to obtain a ride without payment therefor or fraudulently to obtain carriage upon any such engine or car.
2. Take passage, ride, or enter for the purpose of taking passage or riding, upon the tracks, rods, brakebeams, or any part of any car, locomotive engine, or tender, not ordinarily and customarily used or intended for the resting place of a person riding upon or operating the same, unless the one taking such passage is a railway employee in the performance of the employee's duty.

Any person violating any of the provisions of this section shall be guilty of a class B misdemeanor.

**49-10.1-13. Clearance required for tracks.** No person unless authorized by the commission shall erect or maintain on any railroad track or railroad right of way any:

1. Fixed or permanent structure or obstruction at a distance of less than eight feet [2.44 meters] from a railroad track, measured from the centerline of the track.
2. Bridges, viaducts, or any other obstructions passing over and above a railroad track at a height less than twenty-one feet [6.40 meters], measured from the top of the track rail. The commission, upon application and after a thorough investigation, may permit any person to which this section applies to erect or reconstruct and maintain any such facility at a lesser clearance than herein provided for when in the judgment of the commission the compliance with the clearance prescribed herein would be unreasonable or unnecessary and when a lesser clearance than that hereinbefore provided for would not create a condition unduly hazardous to the employees of such railroad or any other person. Station freight house platforms which have a vertical height of not more than four feet [1.22 meters], measured from the top of the track rail, may be erected and maintained at a less distance from the center of the track which they adjoin than herein specified.

**49-10.1-14. Commission may adopt and enforce safety rules.** The commission, for the protection of persons and property, may adopt and enforce railroad safety rules not inconsistent with any federal agency having jurisdiction over railroads. The commission may adopt rules more stringent than federal rules when necessary to eliminate an essentially state or

local safety hazard if the rules are not incompatible with any federal law or rule and do not create an undue burden on interstate commerce.

**49-10.1-15. Semimonthly pay to railroad employees.** All railroads doing business within this state are required to pay their employees, at least semimonthly, the wages earned by them within fifteen days of the date of such payment unless prevented by inevitable casualty. Whenever an employee shall be discharged, the employee's wages shall be paid to the employee at the time of the employee's discharge or whenever the employee shall demand the same thereafter.

**49-10.1-16. Intoxicated engineer or conductor - Penalty.** Every person who is intoxicated while in charge as engineer of a locomotive engine or while acting as a conductor or driver upon any railroad train or car is guilty of a class A misdemeanor.

**49-10.1-17. Agreements to restore Amtrak service.** The governor or the director of the department of transportation may make agreements in accordance with applicable federal law with the state of Montana and relevant federal agencies for the renewal of service on the Amtrak north coast Hiawatha route from Fargo to Spokane, Washington. The governor, the director of the department of transportation, or the director of the department of economic development and finance may enter agreements with any political subdivision, state, and federal agency for the restoration of daily service on the Amtrak empire builder route.

**49-10.1-18. Determination of train speeds.** If the governing body of a city proposes to establish a speed limit on trains passing through its corporate limits and an agreement cannot be reached with the railway company operating the railroad, the governing body of the city may file with the commission a petition that sets forth the facts and requests the commission's assistance in resolving the matter.

## **CHAPTER 49-11**

### **RAILROAD BRIDGES, CROSSINGS, INTERSECTIONS, AND FENCES**

**49-11-01. Obstruction of crossing by railroad - Provision for temporary way.** Every railroad corporation while engaged in raising or lowering any railroad track or in making any other alterations, by means of which a railroad crossing may be obstructed, shall provide and keep in good order a suitable temporary way and crossing with adequate protection to enable travelers to avoid or pass such obstruction.

**49-11-02. Railroad bridges must be in good repair.** Every railroad corporation shall maintain and keep in good repair all bridges and their abutments which the corporation shall construct for the purpose of enabling its road to pass over or under any public highway, watercourse, or other way. Railroad corporations which have transferred railway property to the public service commission in trust for the purposes of reorganization or reopening are not liable for failure to maintain railroad bridges in good repair during the period of trust.

**49-11-03. Railroad bridge must provide clear passage over highway.** When it shall be necessary in the construction of a railroad to erect a bridge or culvert over any public highway or street, it shall be sufficient to construct the same so as to give a clear passageway of twenty feet [6.10 meters] or two passageways of fourteen feet [4.27 meters] each.

**49-11-04. Highways and watercourses to be restored to former state.** Every corporation constructing, owning, or using a railroad shall restore every stream of water, watercourse, street, highway, or canal across, along, or upon which such railroad may be constructed to its former state or to such condition that its usefulness shall not be materially impaired and thereafter shall maintain the same in such condition against any effects in any manner produced by such railroad.

**49-11-05. Railroad to maintain sufficient highway crossings.** Repealed by S.L. 1993, ch. 278, § 2.

**49-11-06. Railroad crossings - Construction and maintenance.**

1. A public highway-railroad crossing at grade shall be constructed of a grade of earth on one or both sides of the railroad track, as the location may require, for the entire width of the highway grade but in no case less than twenty feet [6.10 meters] in width, the middle point of which shall be as nearly as practicable at the middle point of the highway and such grade shall be of such slope as shall be necessary for the safety and convenience of the traveling public.
2. Firmly fastened planks, concrete, asphalt, or other suitable material for highway construction shall be used on and for the full length of the ties used in the roadbed of such railway where such crossing occurs. The highway material next inside of the rail shall not be more than two and one-half inches [6.35 centimeters] from the inside surface of such rail. The highway material used in the crossing shall not be less than three inches [7.62 centimeters] in thickness, and shall be laid so that the upper surface of the highway material shall be on a level with the upper surface of the rail.
3. At such time as tracks through a railroad crossing are raised or otherwise altered by the railroad, the railroad shall, unless otherwise ordered by the commission, adjust and restore the crossing and the highway approaches, surfaces, and grades as shall be necessary for the safety and convenience of the traveling public. At such time as a public highway at a railroad crossing is altered by the road authority, the road authority at its expense shall adjust and restore the crossing and the highway approaches, surfaces, and grades as shall be necessary for the safety and convenience of the traveling public.

4. It shall be the duty of the railroad to maintain all railroad crossings in a safe and convenient condition for the traveling public. Such responsibility for maintenance shall be limited to that portion of the crossing lying between the tracks and for two feet [.61 meters] beyond the ends of the crossties on each side of the crossing.

**49-11-07. Railroad crossing - Failure to construct or maintain - Penalty.** Repealed by S.L. 1975, ch. 106, § 673.

**49-11-08. Making intersecting railroad crossing - No delay if bond filed.** The making of an intersecting railroad crossing by a railroad corporation constructing a new railroad shall not be hindered, delayed, nor prevented pending the ascertainment and determination of the compensation to be paid the affected railroad, if said railroad corporation proposing to make such crossing shall execute and file a bond with the clerk of the district court in which such proceedings are pending in such amount as the judge of said court may order, conditioned that the railroad corporation executing the same shall pay whatever amount may be ascertained and determined and shall abide any judgment or order of the court made in relation to the matter in controversy. The amount of the bond and the sufficiency of the sureties shall be approved by said judge, but no corporation which shall have obtained the right of way and constructed its road at the point of intersection before the commencement of an action under the provisions of the chapter on eminent domain shall be required to alter the grade or change the location of its road or be required to bear any part of the expense of making and maintaining such crossing.

**49-11-09. Railroads intersecting - Compensation governed by law of eminent domain.** Every corporation whose railroad shall be intersected by any new railroad shall unite with the owners of such new railroad in forming such intersection and connections and shall grant the facilities provided for in section 49-11-08. If the two corporations cannot agree upon the amount of compensation to be paid therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in the manner provided for the taking of real property under the law of eminent domain.

**49-11-10. Crossings of another railroad - Drawbridges - Stopping of trains.** Repealed by S.L. 1997, ch. 284, § 8.

**49-11-11. Crossing other railroad without stopping - Approval of commission.** Repealed by S.L. 1997, ch. 284, § 8.

**49-11-12. District court may review commission's disapproval of plan for crossing railroad without stopping.** Repealed by S.L. 1997, ch. 284, § 8.

**49-11-13. Grade crossings - Determination of their safety by commission.** Repealed by S.L. 1981, ch. 476, § 6.

**49-11-14. Notice to railroad of investigation of grade crossing.** Repealed by S.L. 1981, ch. 476, § 6.

**49-11-15. Penalty for violation of order.** Repealed by S.L. 1981, ch. 476, § 6.

**49-11-16. Caution signs - Specifications - Posting at crossings.** Repealed by S.L. 1979, ch. 331, § 5.

**49-11-17. Railroad crossing over land owned on both sides by one person - Penalty for failure to provide.** When any person owns land on both sides of any railroad and contiguous to the railway, the corporation or individual owning or operating such railway shall make and keep in good repair a proper cattle guard and causeway or other adequate means of crossing such railway at such reasonable place as may be designated by the landowner or the landowner's agent, upon at least ten days' written notice by the commission to the railroad corporation provided an adequate crossing is not otherwise accessible. The type of all cattle guards required by law to be constructed in this state before being installed shall be approved by the commission. The owner or person in possession of the land through which the railroad

passes may recover twenty-five dollars for every thirty days of default on the part of the person or corporation operating the railroad after at least a ten-day notice served on an officer, roadmaster, or section foreman of the operating company has designated the place for the erection of the cattle-guarded crossings or the road crossing, requested and a like penalty for failure to keep such cattle guards or road crossings in good repair after at least a ten-day written notice has been served upon the operating company that such repairs are necessary.

**49-11-18. Construction of railroad - Crossing highway or waterway.** Subject to the provisions of section 49-11-03, a railroad corporation shall have the power to:

1. Construct its railroad across, along, or up any stream of water, watercourse, street, highway, riverfront, steamboat, or other public landing, or canal which its route shall intersect or touch.
2. Carry any highway or street which it shall touch, intersect, or cross, over or under its track, as may be most expedient for the public good.
3. Change the course or direction of any highway or street when made necessary or desirable to secure more easy ascent or descent by reason of any embankment or cut made in the construction of the railroad and to take land necessary therefor, if such highway or road is not so changed from its original course more than six rods [30.18 meters] nor its distance thereby lengthened more than five rods [25.15 meters].

**49-11-19. Blocking or obstructing crossing with train - Penalty.** No person shall operate any train in such a manner as to prevent vehicular use of any roadway for a period of time in excess of ten consecutive minutes except:

1. When necessary to comply with safety signals affecting the safety of the movement of trains;
2. When necessary to avoid striking any object or person on the track;
3. When the train is disabled, by accident or otherwise;
4. When the train is in motion except when engaged in switching operations;
5. When there is no vehicular traffic waiting to use the crossing; or
6. When necessary to comply with a government statute or regulation.

Any person who violates this section is guilty of an infraction. The provisions of this section do not apply to cities which have on the date of such obstruction ordinances covering the same subject matter.

**49-11-19.1. Blocking or obstructing alternative crossings - Penalty.** Any person operating a train who shall block or obstruct a public railroad crossing and who has the alternative of blocking or obstructing a crossing with active grade crossing traffic control devices or a crossing without such device shall, where feasible, and subject to the exception set forth in section 49-11-19, leave open the crossing with active grade crossing control devices. Any person who violates this section is guilty of an infraction.

**49-11-20. Installation of flagman at crossings.** Whenever it shall appear that owing to any construction work or repair work, or for any other cause, an unusual number of trains are being operated in or through any city in this state, the commission, upon complaint by the governing body of such city through its chief executive officer, shall compel the installation of a flagman, without a hearing. Such order shall be complied with within five days. The railroad corporation may remove such flagman whenever the movement of trains through such city assumes a normal condition.



**49-11-21. Warning device sounded at crossing by locomotive - Exception.** A warning device must be placed on each locomotive engine and must be sounded at a distance of at least eighty rods [402.34 meters] from the place where the railroad crosses any other road or street and must continue to be sounded until it has crossed the road or street. The governing body of a city may adopt a quiet zone ordinance, as allowed by federal law and implemented under the federal railroad administration's supplemental safety measures for at-grade crossings, prohibiting a locomotive engine from sounding a warning device at crossings within the quiet zone under regular crossing conditions. A crew member may sound a warning device as determined appropriate by that crew member.

**49-11-22. Liability for failure of locomotive to sound bell, horn, or whistle at crossing.** A person that owns or has a leasehold interest in a locomotive that fails to sound its warning device at any road or street crossing as required by section 49-11-21 is guilty of an infraction and is liable for all damages that are sustained by any person by reason of the neglect. If a crew member of a locomotive does not sound a warning device at a crossing for which the sounding of a warning device is prohibited under a city ordinance, any crew member or person with any interest in the locomotive is not liable for any damages sustained by a person by reason of the failure to sound a warning device. This section does not exempt a railroad corporation from any liability created under chapter 49-16 or the Federal Employers' Liability Act [45 U.S.C. 51 et seq.] for injuries to its employees or agents.

**49-11-23. Liability of engineer for failure to sound bell, horn, or whistle of locomotive at crossing.** Every locomotive engineer who does not cause a warning device to be sounded as required by section 49-11-21 shall be guilty of an infraction.

**49-11-24. Railroad right of way - Fences.**

1. Every owner or lessee of land abutting any operating railroad's right of way who has a legal fence, as defined in section 47-26-01, along all sides of the land except the side abutting the right of way may make a written request of the owners or operators of the railroad to construct a fence along the right of way. Upon receipt of the request, the owners or operators shall erect, within a reasonable time, a legal fence along the right of way to confine livestock as required by section 36-11-01. The owners or operators shall maintain the fence so long as the owner or lessee maintains the fence around the other sides of the enclosure.
2. Where the railroad has a fence along its right of way, the owners or operators of the railroad shall maintain the fence without necessity of a request by the owner or lessee so long as the owner or lessee maintains a fence around the other sides of the enclosure.
3. Except for the penalty and liability imposed by sections 49-11-29 and 49-11-30, the failure to comply with the requirements of this section is not, in itself, evidence of negligence and the fact that this section has been violated is not admissible in any other action.

**49-11-25. How fence on railroad right of way to be constructed.** A fence required under the provisions of section 49-11-24 shall be constructed as follows:

1. Good posts shall be set in the ground firmly, and such posts shall be not more than twenty feet [6.10 meters] apart.
2. There shall be securely fastened to such posts not less than four strands of barbed wire. The top wire shall be not less than fifty-four inches [137.16 centimeters] above the ground, the bottom wire shall be approximately sixteen inches [40.64 centimeters] above the ground, and the two center wires shall equally divide the distance between the top and bottom wires.

3. Instead of the barbed wire described in subsection 2, woven wire which is not less than forty-eight inches [121.92 centimeters] wide may be used.

**49-11-26. Landowner may require railroad to build hog-tight fence.** Every owner or lessee of a tract of land abutting upon any railroad or railway, or through which any railroad or railway has been or may be constructed, who has built a hog-tight fence along all sides of such land, except the side abutting against the railroad right of way, may demand of the owners or operators of such railroad or railway that the right of way adjacent to such tract of land be enclosed with a hog-tight fence. Upon such demand, such owners or operators shall erect the hog-tight fence and maintain the same in good repair so long as the owner of such tract of land shall continue to maintain a hog-tight fence around the other sides of the enclosure.

**49-11-27. Requirements of hog-tight fence built by railroad on right of way.** A fence built pursuant to a demand made under section 49-11-26 shall be constructed as follows:

1. The fence shall be not less than twenty-six inches [66.04 centimeters] high.
2. The woven wire shall have not less than seven cables and the meshes therein shall not exceed six inches [15.24 centimeters] in length.
3. The bottom mesh shall be not more than three inches [7.62 centimeters] wide; the second mesh shall be not more than three and one-half inches [8.89 centimeters] wide; the third mesh shall be not more than four inches [10.16 centimeters] wide; the fourth mesh shall be not more than four and one-half inches [11.43 centimeters] wide; the fifth mesh shall be not more than five inches [12.7 centimeters] wide; and the sixth mesh shall be not more than six inches [15.24 centimeters] wide.
4. The bottom wire of the fence shall be placed not to exceed two inches [5.08 centimeters] from the surface of the ground.
5. Not less than three barbed wires of not less than no. 13 standard gauge with barbs not exceeding six inches [15.24 centimeters] apart shall be placed above the woven wires. The first barbed wire shall be placed four inches [10.16 centimeters] above the woven wire; the second barbed wire shall be placed eight inches [20.32 centimeters] above the first barbed wire; and the third barbed wire shall be placed eight inches [20.32 centimeters] above the second barbed wire.
6. The posts used in such fence shall be of ordinary size for fence purposes, shall be set in the ground to a depth of at least two feet [.61 meters], and shall be not to exceed sixteen feet [4.88 meters] apart.

**49-11-28. Swinging gates - When railroad required to maintain.** Upon the written request of the owner or lessee of land abutting the railroad's right of way, the owners or operators of a railroad shall construct and maintain suitable and safe swinging gates on any side of a private crossing enclosed by the railroad under section 49-11-24. The request must be made at the same time a request is made under subsection 1 of section 49-11-24.

**49-11-29. Failure to construct fence or swinging gate - Penalty.** Any person owning or operating any line of railroad within this state and refusing or neglecting to comply with sections 49-11-24 through 49-11-28 is guilty of a class A misdemeanor. A prosecution or conviction under sections 49-11-24 through 49-11-28 does not relieve such person from liability for the maiming or killing of livestock on the right of way by reason of that person's negligence.

**49-11-30. Failure of railroad to fence - Damage to owner of stock - How collected.** Any corporation operating a railroad and failing to fence the same against livestock running at large where the duty to fence exists is liable to the owner of any stock killed or injured by reason of the want of such fence for the full amount of the damages sustained by the owner, unless the injury was occasioned by the grossly negligent act of the owner of the stock or the owner's agent. To recover, the owner of the stock must prove only the loss of or injury to the owner's property.

Notice in writing that a loss or injury has occurred, accompanied by an affidavit thereof, must be served upon an officer of the corporation or upon a station or ticket agent employed by the corporation in the county where the loss or injury occurred. If the corporation fails or neglects to pay the damages within ninety days after the notice is served on it, the owner is entitled to recover from the corporation double the amount of damages actually sustained by the owner, and a reasonable attorney's fee when it is adjudged by a court of competent jurisdiction that the claimant is entitled to the amount claimed.

**49-11-31. Certain sections not applicable within corporate limits.** The provisions of sections 49-11-24 through 49-11-30 shall not apply to street railways or the rights of way of railroads within the limits of an incorporated city.

**49-11-32. Train crew exemption.** In any circumstances involving an accident between a pedestrian or vehicle and a locomotive or part of a train in which the engineer or any other crew member of the train is interviewed by a law enforcement officer, the engineer or any other crew member may not be required to furnish a motor vehicle operator's license and no citation involving the operation of a train in violation of title 39 may be issued against the engineer or any other crew member of the train.

## **CHAPTER 49-12**

### **RAILWAY STATIONS AND STATION YARD SERVICE**

[Repealed by S.L. 1975, ch. 106, § 673; 1977, ch. 443, § 3]

## **CHAPTER 49-13**

### **RAILROAD SAFETY REQUIREMENTS**

[Repealed by S.L. 1965, ch. 322, § 4; I. M. approved November 3, 1964,  
S.L. 1965, ch. 469, § 2; S.L. 1975, ch. 106, § 673;  
S.L. 1977, ch. 443, § 3]

**CHAPTER 49-14**

**FREIGHT AND PASSENGER SERVICE OF RAILROADS**

[Repealed by S.L. 1977, ch. 443, § 3]

**CHAPTER 49-15**

**REGULATION OF RAILROAD RATES**

[Repealed by S.L. 1975, ch. 106, § 673; 1977, ch. 443, § 3]

## **CHAPTER 49-16**

### **LIABILITY OF RAILROADS FOR NEGLIGENCE**

**49-16-01. Liability of railroad for damages from fire.** Repealed by S.L. 1977, ch. 443, § 3.

**49-16-02. Railroad's liability for injury or death of employee.** Every railroad corporation, while engaged in commerce to which the regulative powers of the state extend, shall be liable in damages to any person suffering injury while that person is employed by such railroad corporation in such commerce, or in case of the death of such employee, to that employee's personal representative for the benefit of the surviving widow, husband, or children of that employee, and if none, then for the next of kin dependent upon that employee, if such injury or death results in whole or in part from the negligence of any officer, agent, or employee of such railroad corporation, or by reason of any defect or insufficiency due to its negligence in any of its cars, engines, appliances, machinery, track, roadbed, works, or other equipment.

**49-16-03. Contributory negligence not bar to recovery.** In all actions brought against a railroad corporation under or by virtue of any of the provisions of this chapter to recover damages for personal injuries to, or the death of, any employee, the fact that the employee had been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributed to such employee. No such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such railroad corporation of any state or federal statute, enacted for the safety of employees, contributed to the injury or death of such employee.

**49-16-04. Assumption of risk.** In any action brought against any railroad corporation under or by virtue of any of the provisions of this chapter to recover damages for injuries to, or death of, any of its employees, such employee shall not be held to have assumed the risk of the employee's employment in any case where the violation by such railroad corporation of any state or federal statute enacted for the safety of employees contributed to the injury or death of such employee.

**49-16-05. Contracts exempting railroad from liability void.** Any contract, rule, regulation, or device whatsoever the purpose or intent of which shall be to enable any railroad corporation to exempt itself from any liability created by sections 49-16-02, 49-16-03, 49-16-04, 49-16-05, and 49-16-08 to that extent shall be void. In any action brought against the railroad corporation, under or by virtue of any of the provisions of this chapter, the corporation may set off therein any sum it has contributed or paid to any insurance relief benefit or indemnity that may have been paid to the injured employee or to the person entitled thereto on account of the injury or death for which said action was brought.

**49-16-06. Limitation of actions.** Repealed by S.L. 1977, ch. 443, § 3.

**49-16-07. Survival of right of action.** Repealed by S.L. 1977, ch. 443, § 3.

**49-16-08. Defenses of assumption of risk and contributory negligence barred.** Any employee of a railroad corporation who, while in the performance of the employee's duty and while engaged in any commerce subject to the regulative power of this title, may be injured or killed by any locomotive, car, structure, or obstruction used or retained contrary to the provisions of this title, shall not be deemed to have assumed the risk thereby occasioned or to have been guilty of contributory negligence, although the employee continued in the employ of such railroad corporation after the unlawful use of such locomotive, car, permanent overhead structure, or obstruction shall have been brought to the employee's knowledge. Notwithstanding the permission granted in this title to railroads to construct station or freight house platforms four feet [1.22 meters] high measured from the top of the track rail and near to the centerline of the track, any such structure shall be at the sole risk of the railroad corporation.



**49-16-09. Personal injuries - When railroad not liable.** Repealed by S.L. 1977, ch. 443, § 3.

**49-16-10. Liability for acts of railway police.** Repealed by S.L. 1977, ch. 443, § 3.

**49-16-11. Liability of owner or operator of railroad limited.** Repealed by S.L. 1997, ch. 284, § 8.

## **CHAPTER 49-17**

### **OFFENSES AGAINST RAILROADS**

[Repealed by S.L. 1975, ch. 106, § 673; 1977, ch. 443, § 3]

## **CHAPTER 49-17.1 RAIL SERVICE ASSISTANCE**

### **49-17.1-01. Definitions.**

1. "Commission" means the public service commission.
2. "Department" means the department of transportation of this state as provided in section 24-02-01.1.

**49-17.1-02. Department of transportation as designated state agency.** The department, with the approval of the commission, is authorized to exercise those powers necessary for the state to qualify for rail service assistance grants pursuant to provisions of the Railroad Revitalization and Regulatory Reform Act of 1976 [Pub. L. 94-210; 90 Stat. 149; 49 U.S.C. 1651 et seq.], including authority to:

1. Prepare and recommend a state plan for all rail transportation and local rail services.
2. Administer and coordinate the state plan.
3. Provide in the plan for the equitable distribution of rail service assistance grants among state, local, and regional transportation authorities.
4. Promote and support safe, adequate, and efficient rail services for those railway lines receiving rail service assistance grants.
5. Employ sufficient trained and qualified personnel for these purposes.
6. Maintain adequate programs of investigation, research, promotion, and development in connection with these purposes and to provide for public participation therein.
7. Provide satisfactory assurances on behalf of the state that fiscal control and fund accounting procedures will be adopted by the state as may be necessary to assure proper disbursement of an account for federal funds paid to the state as rail service assistance grants.
8. Comply with the regulations of the secretary of transportation of the United States department of transportation affecting rail service assistance grants.
9. Do all things otherwise necessary to maximize federal assistance to the state under the Railroad Revitalization and Regulatory Reform Act of 1976 [Pub. L. 94-210; 90 Stat. 149; 49 U.S.C. 1651 et seq.], and any amendments to it.

**49-17.1-02.1. Department may authorize local rail projects.** For the purpose of promoting the public interest and local economic development, the department may utilize revenue generated under this chapter for the construction or improvement of railway freight transportation projects not otherwise eligible for assistance under the Railroad Revitalization and Regulatory Reform Act of 1976 [Pub. L. 94-210; 90 Stat. 149; 49 U.S.C. 1651 et seq.] and which meet standards and specifications developed by the department.

**49-17.1-03. Application for assistance.** The department, with the approval of the commission, may make application on behalf of the state for grants made available by the secretary of transportation under the Railroad Revitalization and Regulatory Reform Act of 1976 [Pub. L. 94-210; 90 Stat. 149; 49 U.S.C. 1651 et seq.].

**49-17.1-04. Use of public and private funds - Public service commission participation.** The department, with the approval of the commission, may utilize public and private funds appropriated by the legislative assembly in carrying out the purpose of this chapter. The department shall cooperate with the commission and with other states in the reorganization or reopening of any railway line which may have been abandoned by any railway corporation providing railway services within the state. In carrying out the authority conferred by this section, the department may enter into agreements, contracts, or other arrangements with the necessary parties to accomplish the purposes of this chapter.

**49-17.1-05. Subsidy of railway lines.** The department, with the approval of the commission, may provide financial assistance, within the limits of funds appropriated by the legislative assembly, for the continuation of operations and maintenance of any railroad within the state, as provided for in the Railroad Revitalization and Regulatory Reform Act of 1976 [Pub. L. 94-210; 90 Stat. 149; 49 U.S.C. 1651 et seq.], or other relevant federal legislation. The department or the commission may act as the agent in cooperation with the federal government, any local or regional transportation authority, local governmental units, any group of rail users, or any person in any rail service assistance program.

**49-17.1-06. Railroad plan and proposals.** The department and the commission may develop and make available to interested persons feasibility plans, proposals, and recommendations for mergers, consolidations, reorganizations, and other unification or coordination projects for rail services which the department and the commission believe would result in a rail system which is more efficient and consistent with public interest.

## **CHAPTER 49-17.2 REGIONAL RAILROAD AUTHORITIES**

**49-17.2-01. Definitions.** As used in this chapter, unless the context plainly otherwise requires:

1. "Bonds" means any bonds, notes, interim certificates, debentures, or similar obligations issued by an authority pursuant to this chapter.
2. "Governing body" means the official or officials authorized by law to exercise ordinance making or other lawmaking powers of a political subdivision.
3. "Political subdivision" or "subdivision" means any county, municipality, or other body politic of this state.
4. "Project" means any railroad or related facilities operated or owned by an authority, including all real and personal property, structures, machinery, equipment, and appurtenances or facilities which are part of the railroad and useful in connection therewith, including facilities for the convenience of handling passengers and freight or as part of railroad operations.
5. "Railroad authority" or "authority" means an authority created pursuant to this chapter.
6. "Real property" means lands, structures, and interests in land, including lands under water and riparian rights, and including any and all lesser interests, legal or equitable, pertaining to real property.

**49-17.2-02. Creation of authority by agreement of subdivisions.** Two or more political subdivisions may form a regional railroad authority by execution of an agreement authorized by resolution of the governing body of each subdivision and approved by a sixty percent majority of the electors of the subdivisions voting on the question of adoption of the resolution.

**49-17.2-03. Contents of agreement creating authority.** The agreement authorized in section 49-17.2-02 shall state all of the following:

1. That the railroad authority is created and incorporated under the provisions of this chapter as a political subdivision of this state.
2. The name of the authority which shall include the words "regional railroad authority".
3. The names of the subdivisions which have approved the agreement and are the initial members of the regional railroad authority.
4. The names and addresses of the persons initially appointed by the resolutions approving the agreement to act as the representatives or alternate representatives of the subdivisions.
5. The address of the registered office of the authority and the name of its registered agent at such office.
6. That the subdivisions which are members of the regional railroad authority and its commissioners, officers, and agents are not liable for its obligations.

7. Any other provision for regulating the business of the regional railroad authority which may be agreed upon by the subdivisions.

**49-17.2-04. Filing of agreement and resolutions - Certificate of incorporation - Beginning of corporate existence.** The agreement and a certified copy of the resolution of each subdivision shall be filed with the secretary of state. If the agreement conforms to the requirements of this chapter, the secretary of state shall file it and issue a certificate of incorporation, which shall state the name of the authority and the date of incorporation. The existence of the authority as a political subdivision of this state shall begin upon the issuance of the certificate of incorporation. The certificate of incorporation shall be conclusive evidence of the existence of the authority.

**49-17.2-05. Hearing before adoption of resolution - Publication of notice.** No resolution authorized by section 49-17.2-02 or 49-17.2-11 shall be adopted without a public hearing in each subdivision involved. Notice of such hearing shall be given at least ten days prior thereto in the official newspaper of the subdivision, or if the subdivision has no official newspaper, then in a newspaper having general circulation in the subdivision.

**49-17.2-06. Appointment of commissioners of authority - Terms of office - Vacancies.** The governing bodies of the subdivisions participating in a regional railroad authority shall appoint not less than five persons as commissioners of the regional railroad authority. The number to be appointed and their representation shall be provided for in the agreement. All commissioners of a regional railroad authority shall be appointed for a term of one year. Vacancies shall be filled for the unexpired term in the same manner as the original appointments. Each commissioner shall hold office until a successor has been appointed and qualified.

**49-17.2-07. Power vested in commissioners - Rules for operation.** The power of each regional authority is vested in the commissioners. Each authority may adopt and amend rules for its own operations subject to the agreement of the subdivisions establishing the authority and subject to the provisions of this chapter.

**49-17.2-08. Chairman and secretary-treasurer of authority.** Each regional authority shall elect a chairman and a secretary-treasurer from among the commissioners.

**49-17.2-09. Executive director and other agents - Delegation of powers and duties.** A regional authority may appoint or elect an executive director, and such other officers, agents, and employees as it may determine. An authority may delegate its powers and duties to one or more of its officers, agents, or employees.

**49-17.2-10. Reimbursement of commissioners' expenses.** A commissioner shall receive no compensation for services but shall be reimbursed for the necessary expenses incurred in the discharge of the commissioner's duties at the rates provided in sections 44-08-04 and 54-06-09.

**49-17.2-11. Addition of subdivisions to authority.** A regional authority may be increased to serve one or more additional subdivisions upon the approval by resolution of each such additional subdivision and of each of the subdivisions then parties to the agreement, and upon approval of a sixty percent majority of the electors, of each of the subdivisions to be added, voting on the question of the adoption of the resolution.

**49-17.2-12. Withdrawal of subdivision from authority - Disposition of assets and liabilities.** A member subdivision may withdraw from the authority if the commissioners of the authority consent to the withdrawal. In such event, the commissioners shall provide for the retention or disposition of its assets and liabilities. However, if the authority has any bonds outstanding no withdrawal shall be effected unless one hundred percent of the holders of the bonds consent in writing to the withdrawal.

**49-17.2-13. Filing of resolution increasing or decreasing authority - Amended certificate of incorporation.** If the number of subdivisions participating in a regional authority is

increased or decreased pursuant to section 49-17.2-11 or 49-17.2-12, it shall forward to the secretary of state a certified copy of each resolution adopted pursuant thereto. Upon receipt of the resolution or resolutions, the secretary of state shall issue an amended certificate of incorporation.

**49-17.2-14. Powers of political subdivisions in aid of regional authority.** Any subdivision participating in an authority may:

1. Lend or donate money to the authority.
2. Provide that all or a portion of the taxes or funds available to the subdivision for railroad purposes be transferred or paid directly to the authority.
3. Cause water, sewer, or drainage facilities, or any other facilities which it is authorized to provide, to be furnished adjacent to or in connection with railroads or facilities.
4. Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or any other rights or privileges therein to the authority.
5. Furnish, dedicate, close, pave, install, grade, regrade, plan, or replan, to the extent allowed by title 24, streets, roads, roadways, and walks from established streets or roads to such railroad facilities.
6. Aid and cooperate with the authority in the planning, undertaking, construction, or operation of railroad facilities.
7. Enter into agreements with the authority regarding action to be taken by the subdivision pursuant to the provisions of this section.

**49-17.2-15. Corporate powers of authority.** A regional authority may:

1. Sue and be sued, have a seal, and have perpetual succession.
2. Execute such contracts, other instruments, and take such action as may be necessary to carry out the purposes of this chapter.

Every authority may exercise such powers as are necessary or incidental to carry out the purposes of this chapter.

**49-17.2-16. Planning, acquisition, and operation of railroads and facilities - Acquisition of property.** A regional authority may plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect its railroads, and railroad facilities used or useful in the operation of a railroad. For these purposes an authority may acquire by purchase, gift, devise, lease, or condemnation any real or personal property or any interest therein.

**49-17.2-17. Use of public waters by authority - Buildings, roadways, and bridges.** A regional authority may establish or acquire and maintain railroads over any public waters of this state and any submerged lands under such public waters. It may construct and maintain terminal buildings, causeways, roadways, and bridges for approaches to or connecting with any such railroads.

**49-17.2-18. Power of eminent domain - Restrictions on acquisition of public or railroad property.** An authority may acquire all real or personal property that it deems necessary for carrying out the purposes of this chapter, whether in fee simple absolute or lesser interest, by condemnation and the exercise of the power of eminent domain in accordance with chapter 49-09. An authority shall have no power of eminent domain with respect to property owned by another authority or subdivision or public agency of this or any other state without the

consent of such authority, subdivision, or public agency. The authority shall not condemn property owned or used by a railroad corporation unless the interstate commerce commission, or other authority with power to make the finding, has found that the public convenience and necessity permit discontinuance of the rail service on the property.

**49-17.2-19. Public purpose and necessity for acquisitions.** All land and other property and privileges acquired and used by or on behalf of any authority are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity.

**49-17.2-20. Exemption from taxation of property and income of authority.** Any property acquired by an authority and any income derived by the authority shall be exempt from taxation.

**49-17.2-21. Annual certification of tax levy for authority - Levy of tax - Collection.** An authority may certify annually to the governing bodies the amount of tax to be levied by said governing bodies for railroad purposes. Each subdivision shall levy the amount certified, pursuant to provisions of law authorizing political subdivisions of this state to levy property taxes. The levy may not exceed the maximum levy permitted by section 57-15-28.1. Each subdivision shall collect the taxes certified by a railroad authority in the same manner as other taxes are levied and collected and shall pay the revenues to the railroad authority.

**49-17.2-22. Zones of benefit - Tax levy applied.** The authority may, in connection with the certification of an annual tax levy pursuant to section 49-17.2-21, designate various zones of benefit or geographical portions of the member subdivisions which, in the judgment of the authority, will be or have been benefited by projects. The authority may then certify that such annual levy be applied only to such benefited area.

**49-17.2-23. Maximum tax levy - County levy not applied in subdivision making levy.** In subdivisions which are parties to an agreement creating a regional railroad authority, a levy, not exceeding the limitation in section 57-15-28.1 may be made for such purposes. A county levy pursuant to section 49-17.2-21 shall not apply to any other subdivision within that county making a levy under section 49-17.2-21.

**49-17.2-24. Deposit of tax proceeds - Expenditure.** The proceeds of taxes for support of a railroad authority shall be deposited in such account or accounts in which other revenues of the authority are deposited and may be expended by the authority as provided in this chapter.

**49-17.2-25. Covenant to levy taxes until bonds paid.** Prior to the issuance of bonds, the authority may by resolution covenant and agree that the total amount of such taxes authorized or any portion thereof will be certified, levied, and deposited annually as herein provided, until the bonds and interest thereon are fully paid.

**49-17.2-26. Acceptance and expenditure of federal and other grants and loans.** An authority may accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys, public or private, made available by grant or loan or both, to accomplish, in whole or in part, any of the purposes of this chapter.

**49-17.2-27. Designation of director of department of transportation as agent of authority - Funds held in separate account.** An authority may designate the director of the department of transportation as its agent to accept, receive, receipt for, and disburse federal and state moneys, and other moneys, public or private, made available by grant or loan or both, to accomplish in whole or in part, any of the purposes of this chapter. It may designate the director of the department of transportation as its agent to contract for and supervise the planning, acquisition, development, construction, improvement, maintenance, equipping, or operation of any railroad or railroad facility.

All funds received by the director of the department of transportation pursuant to this section shall be deposited in the state treasury. Unless otherwise prescribed by the agency from which such funds were received, the funds shall be kept in separate accounts according to the



purposes for which the funds were made available. Such funds shall be held by the state in trust for such purposes and paid out only when approved by the director of the department of transportation.

**49-17.2-28. Issuance of bonds and notes - Purposes for which proceeds used.** An authority may from time to time issue its bonds or notes in such principal amounts as the authority shall deem necessary to carry out any of its corporate purposes and powers, including, but not limited to the funding or refunding of the principal of or interest or redemption premiums on, any bonds or notes issued by it whether or not the bonds or notes or interest to be funded or refunded have or have not become due, the establishment or increase of reserves to secure or to pay the bonds or notes or interest thereon, and the payment of or establishment of reserves for all other costs or expenses of the authority incident to and necessary to carry out its corporate purposes and powers.

**49-17.2-29. Revenues and funds pledged to payment of bonds and notes - Negotiability.** Every issue of bonds or notes of the authority shall be payable out of revenues or funds of the authority, subject only to agreements with the holders of particular bonds or notes pledging any particular revenues or funds. An authority may issue types of bonds or notes as it may determine, including those payable as to principal and interest solely from one or more revenue-producing contracts made by the authority or from its revenues generally. Any bonds or notes may additionally be secured by a pledge of any grant, subsidy, or contribution from any public agency, or other person, or a pledge of revenue, income, or funds from any source whatsoever. All such bonds and notes shall be negotiable within the meaning of the Uniform Commercial Code, subject only to any registration requirement.

**49-17.2-30. Resolutions for bonds or notes - Security agreement - Terms and conditions.** Bonds or notes of the authority shall be authorized by resolution of the commissioners and may be issued under the resolution or under a trust indenture or other security agreement, in one or more series, and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such conversion, exchange, and registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment at such place or places within or outside the state, be subject to such terms of redemption with or without premium, and contain or be subject to such other terms as the resolution, trust indenture, or security agreement may provide, and shall not be restricted by any other law limiting amounts, maturities, interest rates, or other terms or obligations of public agencies or private persons.

**49-17.2-31. Mortgages and deeds of trust to secure obligations - Filing.** Repealed by S.L. 1997, ch. 284, § 8.

**49-17.2-32. Bond recital conclusive as to authority and purpose.** Any bond reciting that it has been issued by the authority pursuant to the provisions and for the purposes of this chapter shall be conclusively deemed to have been issued pursuant to such provisions and for such purposes.

**49-17.2-33. Continuing validity of signatures on bonds and notes - Temporary bonds.** Any bonds or notes may be issued and delivered notwithstanding that any of the commissioners or officers executing them shall have ceased to hold office at the time of actual delivery. Pending preparation of definitive bonds, an authority may issue temporary bonds which shall be exchanged for definitive bonds.

**49-17.2-34. Sale of bonds.** Bonds issued shall be sold at public or private sale for a price and in a manner determined by the authority.

**49-17.2-35. Bonds exempt from taxation.** Bonds issued by an authority pursuant to the provisions of this chapter, together with interest and income therefrom, shall be exempt from all taxes.

**49-17.2-36. Persons executing bonds not personally liable.** The commissioners of an authority or any person executing such bonds shall not be liable personally by reason of their issuance.

**49-17.2-37. Arrangements for operating and providing railroad service.** The authority may enter into contracts, leases, and other arrangements for such term as the authority may determine with any persons:

1. Granting the privilege of using or improving the railroad or any portion or facility or space for commercial purposes.
2. Conferring the privilege of supplying goods, commodities, things, services, or facilities along the railroad.
3. Making available services to be furnished by the authority or its agents.

In each case the authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service.

**49-17.2-38. Grant of operating privileges and use of railroad and facilities.** Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by this chapter, an authority may by contract, lease, or otherwise, for such consideration and term as it may determine, grant to any person the privilege of operating or using any railroad or railroad facilities or property, owned or controlled by the authority. No person may be granted any authority to operate a railroad other than as a common carrier.

**49-17.2-39. Payments in lieu of property taxes by contractors using railroad and facilities.** All contracts, leases, or other arrangements entered into by an authority pursuant to sections 49-17.2-37 and 49-17.2-38 shall provide for payment of a sum equal to the amount of property taxes which would be due if the property were owned by the person contracting with the authority, to be prorated by the authority among the taxing districts involved, which payment shall be limited, however, so as not to exceed the net income earned by such person from the use of such property.

**49-17.2-40. Disposition of property of authority.** Except as may be limited by the terms and conditions of any grant, loan, or agreement, made or received by the authority, an authority may, by sale, lease, or otherwise, dispose of any of its property, or portion thereof or interest therein.

**CHAPTER 49-18**  
**MOTOR CARRIERS**

[Repealed by S.L. 1965, ch. 322, § 4; S.L. 1975, ch. 106, § 673;  
S.L. 1979, ch. 503, § 7; S.L. 1981, ch. 479, § 16; S.L. 1987,  
ch. 567, § 1; S.L. 1995, ch. 450, § 1]

## **CHAPTER 49-19 COMMON PIPELINE CARRIERS**

**49-19-01. Definition of common pipeline carriers.** Every person:

1. Owning, operating, or managing any pipeline or any part of any pipeline within this state for the transportation of crude petroleum, gas, coal, or carbon dioxide to or for the public for hire, or engaged in the business of transporting crude petroleum, gas, coal, or carbon dioxide by pipelines;
2. Owning, operating, managing, or participating in the ownership, operation, or management of, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipeline, or any part of any pipeline, for the transportation of crude petroleum, gas, or coal bought from others from any oil, gas, or coal field or place of production, to any distributing, refining, or marketing center or reshipping point;
3. Engaged in the business of producing, purchasing, transporting for hire or transporting for sale within this state of natural gas, which is transported through pipelines, or any part of a pipeline, the right of way for which is granted or secured under the provisions of this chapter or through the exercise of the right of eminent domain; or
4. Made a common carrier by or under the terms of a contract with or in pursuance of the laws of the United States,

is a common carrier and is subject to the provisions of this chapter as a common pipeline carrier.

**49-19-02. Pipeline carriers - Special powers of commission.** The commission shall take reports from and may investigate the books and records kept by any pipeline carrier in connection with its business, and may require such company to make monthly reports duly verified under oath showing the total quantity of crude petroleum owned by such carrier and of that held by it in storage for others, and its unfilled storage capacity. No publicity shall be given by the commission to the reports as to stock of crude petroleum of any particular pipeline, but it may make public the aggregate amounts held by all the pipelines making such reports and their aggregate storage capacity.

**49-19-03. Enforcement of orders by commission.** The commission shall hear and determine complaints, require attendance of witnesses, and institute suits and sue out such writs and process as may be necessary for the enforcement of its orders.

**49-19-04. Reservation in gas franchises.** No city or other public corporation hereafter shall grant to any person a franchise to furnish natural gas to the public in this state without making a reservation therein that a percentage of native natural gas shall be used by such person if and when the same is produced in commercial quantities.

**49-19-05. Percentage of native natural gas to be used.** Whenever native natural gas is produced in this state in commercial quantities, any person having a franchise to furnish gas to the public, which franchise is dated after March 9, 1933, shall use fifty percent, or its equivalent, of native natural gas as developed if the source thereof is located not more than six miles [9.66 kilometers] from any established gas pipeline.

**49-19-06. Gas in commercial quantities - What constitutes.** Any gas well of two hundred fifty thousand cubic feet [7079.21 cubic meters] volume and two hundred pounds [90.72 kilograms] of rock pressure shall constitute a well producing native natural gas in commercial quantities under the provisions of this chapter.

**49-19-07. Pro rata distribution of gas.** All wells having the production specified in section 49-19-06 shall be entitled to supply an equal pro rata share of products to be used by any person holding a franchise to furnish gas to the public.

**49-19-08. Operation of pipelines.** The operation of the pipelines to which this chapter applies, for the transportation of crude petroleum, coal, or gas in connection with the purchase or purchase and sale of such crude petroleum, coal, or gas, is a business in the conduct of which the public is interested, and as such is subject to regulation by law. The business of purchasing, or of purchasing and selling, crude petroleum, coal, or gas, which uses in connection with such business a pipeline of the class subject to this chapter to transport the crude petroleum, coal, or gas so bought or sold, shall not be conducted unless such pipeline so used in connection with such business is a common carrier within the purview of this chapter and subject to the jurisdiction herein conferred upon the commission. The attorney general shall enforce these provisions by injunction or other adequate remedy.

**49-19-09. Permission to secure right of way - Condition.** The right to lay, maintain, and operate pipelines, together with telecommunications lines incidental to and designed for use only in connection with the operation of such lines along, across, or under any public stream or highway in this state, is conferred upon all common pipeline carriers. Any person, firm, limited partnership, joint-stock association, corporation, or limited liability company may acquire the right to construct pipelines and such incidental telecommunications lines along, across, or over any public road or highway in this state by filing with the commission an acceptance of the provisions of this chapter, expressly agreeing in writing that in consideration of the rights so acquired, the applicant shall be and become a common pipeline carrier, subject to the duties and obligations conferred or imposed in this chapter. Such right to run along, across, or over any public road or highway, as herein provided for, can be exercised only upon condition that the traffic thereon shall not be interfered with, that such road or highway shall be restored promptly to its former condition of usefulness, and that the restoration thereof shall be subject also to the supervision of the board of county commissioners of the county in which said highway is situated.

**49-19-10. Compensating county for damage to public road in laying pipelines.** In the exercise of the privileges conferred in section 49-19-09, the common pipeline carrier shall compensate the county for any damage done to any public road in the laying of pipelines, or telecommunications lines, along or across the same. Nothing herein shall be construed to grant any such pipeline the right to use any public street or alley in any incorporated city, except by express permission from the governing authority thereof.

**49-19-11. Pipeline carrier must agree to carry without discrimination.** A common pipeline carrier, in the acceptance of the provisions of this chapter, shall agree expressly that it, without discrimination, will accept, carry, or purchase, the oil, coal, gas, or carbon dioxide of the state or of any person not the owner of any pipeline, operating a lease or purchasing oil, coal, gas, or carbon dioxide at prices and under regulations to be prescribed by the commission.

**49-19-12. When pipeline carrier may exercise right of eminent domain.** Every common pipeline carrier which shall have filed with the commission its acceptance of the provisions of this chapter shall have the right and power of eminent domain in the exercise of which it may enter upon and condemn the land, right of way, easements, and property of any person necessary for the construction, maintenance, or authorization of its pipeline. The manner and method of such condemnation, and the assessment and payment of the damages therefor shall be the same as is provided by law in the case of railroads. The right of eminent domain and the right to use public lands, highways, or roads for right of way for pipelines shall be acquired only by compliance with the provisions of this chapter.

**49-19-13. Hearings on rates of pipeline carrier - Power of commission.** The commission shall establish and enforce rates or charges and regulations for gathering, transporting, loading, and delivering crude petroleum, coal, or gas by common pipeline carriers in this state, and for the use of storage facilities necessarily incident to such transportation, and shall prescribe and enforce rules and regulations for the government and control of such common pipeline carriers in respect to their pipelines and receiving, transferring, and loading

facilities. It shall exercise such power upon petition by any person showing substantial interest in the subject matter. No order establishing or prescribing rates, rules, and regulations shall be made except after hearing and notice to the common pipeline carrier affected.

**49-19-14. Reimbursement of excessive rates to shipper.** In the event that any rate shall be filed by any common pipeline carrier and complaint against the same or a petition to reduce the same shall be filed by any shipper, and such complaint shall be sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipeline carrier shall have the right to reparation or reimbursement of all excess in transportation charges paid over and above the proper rate as finally determined on all shipments made after the date of the filing of such complaint.

**49-19-15. Exchange of tonnage by common carrier - Facilities to be maintained for receipt and delivery.** Every common pipeline carrier shall exchange crude petroleum tonnage, coal, or gas with each like common pipeline carrier. The commission shall have the power to require connections and facilities for the interchange of such tonnage, coal, or gas to be made at every locality reached by both pipelines whenever the necessity therefor exists and subject to such rates and regulations as may be made by the commission. Any such common pipeline carrier under like rules and regulations shall be required to install and maintain facilities for the receipt and delivery of crude petroleum, coal, or gas of patrons at all points on such pipeline. No carrier shall be required to receive or transport any crude petroleum, coal, or gas except such as may be marketable under rules and regulations to be prescribed by the commission.

**49-19-16. Commission to make rules on deductions - Orders prima facie evidence.** The commission also shall make rules for the ascertainment of the amount of water and other foreign matter in oil or gas tendered for transportation, and for deduction therefor, and for the amount of deduction to be made for temperature, leakage, and evaporation. The recital herein of particular powers on the part of the commission shall not be construed to limit the general powers conferred by this chapter. Until set aside or vacated by some decree or order of a court of competent jurisdiction, all orders of the commission as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity.

**49-19-17. Pipeline carriers to make and publish tariffs.** Common pipeline carriers shall make and publish their tariffs under such rules and regulations as may be prescribed by the commission.

**49-19-18. Joint action by commissions to regulate interstate commerce.** Where pipelines within the scope of this chapter are engaged in interstate transportation of oil, coal, or gas, the commission shall act jointly and in conjunction with the supervisory body which exercises jurisdiction over and control of such pipelines within any other state for the purpose of control, supervision, making joint rates for interstate transportation of oil, coal, or gas, or any other matters within the scope of this chapter.

**49-19-19. Discrimination between shippers in facilities furnished, service rendered, and rates prohibited.** No common pipeline carrier may discriminate between or against shippers in regard to facilities furnished, services rendered, or rates charged under the same or similar circumstances in the transportation of crude petroleum, coal, gas, or carbon dioxide, nor may there be any discrimination in the transportation of crude petroleum, coal, gas, or carbon dioxide produced or purchased by itself directly or indirectly. In this connection the pipeline must be considered as a shipper of the crude petroleum, coal, gas, or carbon dioxide produced or purchased by itself directly or indirectly and handled through its facilities. No such carrier in such operation, directly or indirectly, may charge, demand, collect, or receive from anyone a greater or lesser compensation for any service rendered than from another for a like contemporaneous service. This does not limit the right of the commission to prescribe rates and regulations from or to some places different from other rates or regulations for transportation from or to other places as it may determine, nor is any carrier guilty of discrimination when obeying any order of the commission. Where there is offered for transportation more crude petroleum, coal, or carbon dioxide than can be transported immediately, the same must be apportioned equitably. Gas

must be taken on a pro rata basis or on such basis as may be established by the industrial commission pursuant to section 38-08-06.

**49-19-20. Duties of pipeline carriers.** Subject to the provisions of this chapter and the rules and regulations which may be prescribed by the commission, every common pipeline carrier shall receive and transport crude petroleum, coal, or gas delivered to it for transportation and shall receive and transport the same and perform its other duties with respect thereto without discrimination.

**49-19-21. Oil and gas wastes - Dangerous field operations - Commission to regulate.** Repealed by S.L. 1983, ch. 399, § 3.

**49-19-22. Violation of law or rules by pipeline carriers - Penalty - Suit by attorney general.** Repealed by S.L. 1975, ch. 106, § 673.

**49-19-23. Unlawful discrimination - Damages - Suit.** Actual damages also may be recovered by and for the use of any person against whom there shall have been an unlawful discrimination prohibited by this chapter. Such suit shall be brought in the name and for the use of the party aggrieved.

**49-19-24. Individuals guilty of discrimination - Penalty.** Repealed by S.L. 1975, ch. 106, § 673.

**49-19-25. Fraudulent consumption of gas - Punishment.** Repealed by S.L. 1975, ch. 106, § 673.

## **CHAPTER 49-20 ELECTRIC COMPANIES**

**49-20-01. Definitions.** As used in this chapter, unless the context otherwise clearly requires:

1. "Electrical supply lines" shall mean those electrical conductors and their necessary supporting and containing structures which are used for transmitting a supply of electrical energy.
2. "Operation" shall be construed and applied only in relation to the manner of operating the lines referred to so as to avoid or minimize the hazard of injury to persons or property and to avoid or mitigate interference with the service of signal lines.
3. "Signal lines" shall mean those lines for public or private signal or communication service and devoted exclusively to the transmission of signals or intelligence which operate at not more than four hundred volts to ground or seven hundred fifty volts between any two points of the circuit and the transmitted power of which does not exceed one hundred fifty watts.

**49-20-02. Commission to regulate operation and maintenance of electrical lines.**

The commission shall regulate the construction, reconstruction, operation, and maintenance of all electrical supply lines and signal lines located in, under, or across the public highways or public places in this state, within and without the limits of incorporated cities, to the extent necessary to avoid or mitigate interference from electrical supply lines and for the purpose of avoiding or minimizing the hazard of injury to persons or property by reason of the close association or proximity of electrical supply lines to or with signal lines.

**49-20-03. Applications - Specifications - Drawings - Prerequisites to construction.**

Prior to commencing the construction or reconstruction of any electrical supply line intended to carry:

1. A constant potential alternating current of over five thousand volts;
2. A constant current circuit exceeding seven and one-half amperes; or
3. A grounded trolley direct current of over seven hundred fifty volts,

or prior to converting a line of another character to one of these, written application shall be made to the commission by the person desiring to construct or reconstruct, or convert said line. The application shall be accompanied by such drawings and specifications as shall show the route of the proposed line in detail and the method of construction and operation, and said application, drawings, or specifications also shall show the route and location relative to the proposed line of any other existing electrical supply or signal line over, across, or parallel with which the proposed line is to be constructed, together with the names of the owners thereof and such other preliminary information as the commission may require.

**49-20-04. Hearing upon application - Time - Witnesses - Evidence.** Upon receipt of the written application provided for in section 49-20-03, the commission shall set a date not later than thirty days from the date of the receipt of the application for a hearing upon the matter, and at least ten days before the date of said hearing shall notify in writing each of the parties affected or likely to be affected by the construction or reconstruction of said line. At such hearing, the commission shall swear witnesses, take evidence, and make such an investigation as shall determine all of the facts in the case. If the party desiring to build the line files its written consent



to abide by the rules and regulations of the commission or the order issued in relation to the matter, then and in that case said party may proceed to construct such line.

**49-20-05. Grant of application without hearing.** Whenever the application provided for in section 49-20-03 is filed with the commission and it shall appear to its satisfaction that all of the interested parties have agreed in writing in regard to the methods of construction, reconstruction, operation, and maintenance of the proposed line, such application thereupon shall be granted without hearing.

**49-20-06. Apportionment of costs.** The commission shall apportion between the interested parties the costs or additional costs which may accrue from the adoption of plans, methods, or means in order to avoid, minimize, or mitigate interference or hazard.

**49-20-07. Rules and regulations adopted by commission.** Repealed by omission from this code.

**49-20-08. Municipalities - Complaints - Hearings.** Any municipality of the state shall have the right to file a complaint with the commission to enforce the provisions of this chapter. The commission shall hold a public hearing whenever any such municipality shall file written complaint and set forth facts which require action on the part of the commission in order to avoid or mitigate electrical interference from electrical supply lines or for the purpose of avoiding or minimizing the hazard of injury to persons or property by reason of the close association or proximity of signal lines with electrical supply lines.

**49-20-09. Regulatory nature of measures - Penalty for violation.** The provisions of sections 49-20-02 through 49-20-08 shall not be construed to affect, control, or change the franchise rights of persons, firms, corporations, or limited liability companies owning or operating electrical supply or signal lines in or upon the highways of this state and shall be construed only as regulatory measures intended to avoid or mitigate interference from electrical supply lines with signal lines and to avoid or minimize the hazard of injury to persons or property by reason of the close association or proximity of electrical supply lines to or with signal lines. Any person violating any of the provisions of said sections or any order made by the commission pursuant thereto shall be punished by a fine of not less than twenty-five dollars nor more than fifty dollars.

**49-20-10. Commission may require extension of electric transmission lines.** Whenever any city, or the inhabitants thereof within, or contiguous to, the territory served by an electric transmission line operated by a public utility subject to the jurisdiction of the commission shall desire to obtain the service furnished by such public utility, the proper authorities of such city, or fifteen percent of the inhabitants thereof, may petition the commission for the extension of such transmission line and service to, into, or through such municipality. The commission thereupon shall enter into an investigation concerning the practicability and reasonableness of such proposed extension and service and the public convenience and necessity to be subserved thereby, and if, after notice and hearing, the commission finds that such extension of line and service is practicable and can be made reasonably, taking into consideration the amount of revenue likely to be derived therefrom and the prospect for a reasonable return to the utility upon the value of such extension, and further finds that public convenience and necessity will be subserved thereby, and that the city or territory contiguous thereto is not already receiving electric service from another public utility or electric cooperative corporation, the commission, by its order, shall require the extension of such line and service by such public utility for the purpose of serving such municipality and the inhabitants thereof upon condition that a franchise for such operation be granted to such public utility by the proper authorities of such municipality, and upon such other terms and conditions as may be just and reasonable. A certified copy of such order, when filed with the auditor of such municipality, shall have the same force and effect as an application by the utility for a franchise. The commission shall fix just and reasonable rates for such service and such reasonable rules and regulations as may be necessary pertaining thereto.

**49-20-11. Appeals from orders of commission.** Any municipality, public utility, or person affected by an order of the commission made under the provisions of this chapter may prosecute and conduct an appeal to the courts in the manner prescribed in chapter 28-32.

**49-20-12. Injury to electric supply lines - Penalty.** Repealed by S.L. 1975, ch. 106, § 673.

**49-20-12.1. Notice of change in topography of lands under or adjacent to electric transmission or telecommunications lines.** Before any change is made in the topography of lands under, or adjacent to, any electric transmission or telecommunications lines, which change would increase the hazard to travel, or to persons or property, the one proposing to make such change shall, except in the case of an emergency, at least ten days before proceeding therewith, notify the public utility or cooperative corporation operating such electric transmission or telecommunications lines. Such notification shall clearly state the nature and location of the proposed change in topography and shall be sent to such public utility or cooperative corporation at its principal place of business within the state by registered or certified mail. In case of an emergency, when ten days' notice cannot be given, notice shall be given, as herein provided, prior to proceeding with such change.

**49-20-13. Electric current - Fraudulent use - Misdemeanor.** Repealed by S.L. 1975, ch. 106, § 673.

**49-20-14. Meter deposits to electric power companies.** Repealed by S.L. 1983, ch. 514, § 2.

**49-20-15. Liability of electric companies for inductive interference.** No person owning or operating electric light and power facilities shall be liable, in the absence of negligent construction or operation of such electric light and power facilities, for inductive interference caused in communication circuits, and shall not, in the absence of negligent construction or operation of such electric light and power facilities, be required to bear any portion of the cost of avoiding, minimizing, or mitigating such inductive interference. The burden of proof of negligent construction or operation of such electric light and power facilities shall be upon the person complaining of the inductive interference.

## **CHAPTER 49-21 TELECOMMUNICATIONS COMPANIES**

**49-21-01. Definitions.** As used in this chapter, unless the context otherwise clearly requires:

1. "Access" means telecommunications services to connect a telecommunications customer or end user with a telecommunications company that allows for the origination or the termination, or both, of WATS, 800, and message toll telecommunications services and private line transport services. "Switched access" includes:
  - a. Local exchange central office switching and signaling;
  - b. Operator and recording intercept of calls;
  - c. Termination of end user lines in the local exchange central office;
  - d. The carrier common line charge for the line between the end user's premises and the local exchange central office; and
  - e. Telecommunications service, including connections, provided to allow transmission service and termination between an interexchange company's premises and the local exchange central office switch for the origination or termination of the interexchange company's switched telecommunications services.
2. "Competitive local exchange company" means any telecommunications company providing local exchange service, other than an incumbent local exchange carrier, whether by its own facilities, interconnection, or resale.
3. "Eligible telecommunications carrier" means a telecommunications company designated under section 214(e) of the federal act as eligible to receive universal service support in accordance with section 254 of the federal act.
4. "Essential telecommunications price factor" means:
  - a. In the case of group I telecommunications companies, a factor determined annually as the lower of:
    - (1) 41.6667 percent of the percentage change of the average annual gross national product price index; or
    - (2) The percentage change of the average annual gross national product price index minus 2.75 percentage points.
  - b. In the case of group II telecommunications companies, a factor determined annually as the lower of:
    - (1) 52.0834 percent of the percentage change of the average annual gross national product price index; or
    - (2) The percentage change of the average annual gross national product price index minus 2.0625 percentage points.

- c. For purposes of the determination of essential telecommunications price factor, group I telecommunications companies are telecommunications companies with over fifty thousand subscribers and group II telecommunications companies are telecommunications companies with fifty thousand or fewer subscribers.
- 5. "Essential telecommunications service" means service that is necessary for switched access to interexchange telecommunications companies and necessary for two-way switched communications for both residential and business service within a local exchange area. A charge based on measured service may not be required for residential and business local exchange service. Essential telecommunications services are limited to:
  - a. Switched access;
  - b. Any new product or service offered in North Dakota after July 1, 1989, deemed essential by the commission after notice and hearing in accordance with chapter 28-32;
  - c. Billing and collection of the billing company's own essential telecommunications services and billing and collection recording for interexchange carriers to which the local exchange carrier provides feature group C access service;
  - d. Primary directory listing, including nonlisted and nonpublished service, and access to directory assistance;
  - e. Emergency 911 services and emergency operator assistance in local exchange areas in which emergency 911 service is not available;
  - f. Except as provided in section 49-02-01.1, mandatory, flat-rate extended area service to designated nearby local exchange areas;
  - g. Installation of the service connection for essential services from the end user's premises to the local exchange network;
  - h. Transmission service necessary for the connection between the end user's premises and the local exchange central office switch including a trunk connection that has direct inward dialing and necessary signaling service such as touchtone used by end users for essential telecommunications services;
  - i. Single or multiparty flat-rate or measured residence and business service;
  - j. Single or multiparty flat-rate or measured combination business and residence service; and
  - k. The transmission service line for a coin or pay telephone.
- 6. "Federal act" means the federal Communications Act of 1934, as amended by the federal Telecommunications Act of 1996 [47 U.S.C. 151 et seq.].
- 7. "Gross national product price index" means the fixed-weighted price index of prices of all the goods and services that make up gross national product, as published quarterly by the United States department of commerce, economics and statistics administration, bureau of economic analysis. "Average annual gross national product price index" means the mean of the gross national product price index published in the third calendar quarter of a year through the second calendar quarter of the following year.

8. "Incumbent local exchange carrier" means a telecommunications company that meets the definition of section 251(h) of the federal act.
9. "Interexchange telecommunications company" means a person providing telecommunications service to end users located in separate local exchange areas.
10. "Local exchange area" means a geographic territorial unit established by a telecommunications company for the administration of telecommunications services as approved and regulated in accordance with chapter 49-03.1.
11. "Management costs" means the reasonable direct actual costs a political subdivision incurs in exercising its police powers over the public rights of way.
12. "Mutual telephone company" means a telephone cooperative organized and operating subject to the provisions of this chapter, and such a cooperative shall also be subject to the general law governing cooperatives, except where such general law is in conflict with this chapter.
13. "Nonessential telecommunications service" means any telecommunications service, other than those essential telecommunications services listed in subsection 3 that a customer has the option to purchase either in conjunction with or separate from any essential telecommunications service. Nonessential telecommunications services include, but are not limited to:
  - a. InterLATA and intraLATA message toll service;
  - b. Private line transport service;
  - c. Calling features and information or enhanced services such as call waiting, call forwarding, three-way calling, intracall, speed calling, call transfer, voice or data store and forward, message delivery, or caller identification;
  - d. Centrex services and features, not including transmission service described in subdivision h of subsection 3;
  - e. Installation of service connections in addition or supplementary to that described in subdivision g of subsection 3 which also provides transmission service between the end user's premises and the local exchange central office switch;
  - f. Mobile telecommunications services using radio spectrum or cellular technology; and
  - g. Packet-switched services.
14. "Price" means any charge set and published in accordance with chapter 49-21 and collected by a telecommunications company for any telecommunications service offered by it to the public or other telecommunications companies.
15. "Private line transport service" means a telecommunications service to a customer over a circuit dedicated to the customer's exclusive use, within a local exchange area, or between or among local exchanges. Private line transport service includes services to customers who are end users and services to telecommunications companies.
16. "Public right of way" means the area on, below, or above a public roadway, highway, street, bridge, cartway, bicycle lane, or public sidewalk in which a political subdivision has a legal interest, including other dedicated rights of way for travel purposes, utility easements, and all the area within seventy-five feet [22.86 meters]

of the centerline of any county or township highway right of way over which a board of county commissioners or a board of township supervisors has control under section 24-01-42. The term does not include the airwaves above a public right of way with regard to cellular or other wireless telecommunications or broadcast service or utility poles owned by a political subdivision or a municipal utility or a telecommunications company, in whole or part.

17. "Rural telephone company" means a telecommunications company that meets the definition of section 153(37) of the federal act.
18. "Service element" means a telecommunications function or service component that is not useful to the user unless it is combined with one or more other telecommunications functions or service components.
19. "Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.
20. "Telecommunications service" means the offering for hire of telecommunications facilities, or transmitting for hire telecommunications by means of such facilities whether by wire, radio, lightwave, or other means.

**49-21-01.1. Inapplicability of provisions of chapter.** Telecommunications service does not include and the provisions of this title do not apply to:

1. The one-way transmission of radio or television signals for broadcast purposes, including the one-way transmission of video programming or other programming service by a cable system as well as subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
2. A hospital, hotel, motel, or similar place of temporary accommodation owning or operating message switching or billing equipment solely for the purpose of reselling telecommunications services to its patients or guests.
3. Telegraph service.
4. Except as provided in section 49-21-01.5, home, business, and coinless or coin-operated public or semipublic telephone terminal equipment and the use of such equipment.
5. The lease of telecommunications equipment by a telecommunications company from a person whose business is the leasing or sale of such equipment.
6. Billing and collection services.
7. Inside wire and premise cable installation and maintenance.
8. Directory services which are not essential, such as "yellow pages" advertising and boldface or color listings in "white pages".
9. Private line transport service.

**49-21-01.2. Exemption - Rate regulation.** Except as provided for in this chapter and sections 49-02-01.1, 49-02-21, 49-02-22, and 49-04-02.1, telecommunications companies and all telecommunications services are exempt from the provisions of chapters 49-02, 49-04, 49-05, and 49-06. Telecommunications companies and services are not subject to rate or rate of return regulation. Any telecommunications company may elect not to be subject to the provisions of this section and section 49-21-01.3, and to be subject to rate and rate of return regulation, by filing an election with the commission in writing. For telecommunications companies with over

fifty thousand subscribers, the election not to be exempt from rate and rate of return regulation is a one-time, irrevocable election.

**49-21-01.3. Certain price increases prohibited - Essential telecommunications services.** Changes in essential telecommunications services prices are prohibited except as specifically provided for in chapter 49-21 and section 49-02-01.1.

1. All increases or decreases in governmentally imposed surcharges and any financial impact on cost of essential telecommunications services caused by governmentally imposed changes in taxes, accounting practices, or separations procedures must be fully reflected in any price for those services within thirty days of the effective date of the surcharge or change.
2. The price of essential telecommunications services may be changed according to the essential telecommunications price factor. Increases may be reflected in prices after notice to the company's customers one billing period in advance. A decrease must be reflected in prices within thirty days of the effective date of the price factor. The commission shall publish the essential telecommunications price factor to be effective January 1, 1994, and annually thereafter, determined by reference to the average annual gross national product price index for the four calendar quarters ending with the second calendar quarter of the preceding calendar year. No price for a service may be changed more than once a year. Prices may be changed by service element, but the aggregate annual price change for a service may not exceed the essential telecommunications price factor. Complaints may be made pursuant to section 49-21-06 for any prices changed under this subsection. A discounted price for an essential telecommunications service is not the price of a service for purposes of this section. Discontinuing or altering any discount price for an essential telecommunications service is not a price change as regulated by this subsection.
3. Nothing in this section prohibits the lowering of a price of an essential service based on reasonable business practices in a competitive environment provided that no price change may be anticompetitive or otherwise in violation of antitrust or unfair trade practice laws.
4. Whenever a price change provided for in this section is less than three percent of the existing price, notwithstanding any time limitations in this section, a telecommunications company may accumulate such changes in price subject to the following conditions:
  - a. Price increases may be accumulated up to a percentage total of five percent.
  - b. Price decreases may be accumulated only to the extent that there is an offsetting accumulated price increase of an equal or greater percentage. Accumulated price decreases may never exceed accumulated price increases.
  - c. Price decreases may be accumulated only for two years beginning January first of the year in which the change is allowed.
  - d. Accumulated price increases may be implemented at the discretion of the telecommunications company.
  - e. The effective date of implementation of an accumulated price change may be prospective only, and in accordance with the filing requirements of section 49-21-04.
5. The monthly price of residence service for group I telecommunications companies defined in subsection 2 of section 49-21-01 may be increased after July 31, 1999, up to fifteen dollars and fifty cents and may be increased after June 30, 2000, up to

eighteen dollars. A telecommunications company increasing prices under this subsection must submit a report to the commission reasonably demonstrating that it reduced the prices of its intrastate intraLATA message toll service and intrastate switched access, as such prices existed on January 1, 1999, in aggregate by an annual amount not less than the annual revenue increase resulting from the service price increases under this subsection. Reductions in message toll and switched access prices attributable to the price increases under this section must be made by similar percentages as to be accomplished in a competitively neutral manner. The commission may review the report and may set aside pursuant to section 49-21-06 the prices of intraLATA message toll service and intrastate switched access if the reductions have not been made in a revenue neutral manner and by similar percentages. Prices set aside pursuant to this section remain effective until the effective date of revised prices filed by the telecommunications company within forty-five days of the commission's order.

6. The commission may investigate an increased price allowed pursuant to subsection 5 and may set aside all or part of the increase if it finds the price is unfair or unreasonable, provided a price for residence service at or below the price in effect on January 1, 1999, may not be set aside under this subsection or section 49-21-06. The commission may not set aside all or part of an increased price as unfair or unreasonable if the commission determines after notice and opportunity for hearing the average cost of providing residence service, as calculated under either representative embedded or forward-looking economic cost methodologies, including shared and common costs, exceeds the price resulting from the increase.
7. Subject to the limitations of this section, nothing in this chapter prohibits an incumbent local exchange carrier from deaveraging local exchange service prices provided the incumbent local exchange carrier agrees to amend its commission approved interconnection agreements to allow for deaveraged interconnection prices effective concurrently with the deaveraged retail prices.

**49-21-01.4. Purchase of essential telecommunications services.** Customers of any telecommunications company must be permitted to purchase essential telecommunications services separate from all other telecommunications services. A telecommunications company may disconnect local exchange or essential telecommunications services only pursuant to rules adopted by the commission.

**49-21-01.5. Access code number usage.** A person who, in the ordinary course of operations, makes telephones available to the public or to transient users of that person's premises, for intrastate telephone calls using a provider of operator services shall ensure that each of its telephones presubscribed to a provider of operator services allows the consumer to use "toll free '8XX'", "950", or "101XXXX 0+" access code numbers to obtain access to the provider of operator services desired by the consumer. Each such person shall ensure that no charge to the consumer for using a "toll free '8XX'", "950", or "101XXXX 0+" access code number is greater than the amount charged for calls placed using the presubscribed provider of operator services.

**49-21-01.6. Call identification services - Charges prohibited - Notice - Exceptions.**

1. Any telephone call identification service offered in this state by a telecommunications company must allow a caller on a per-call and a per-line basis to withhold display of a caller's telephone number from the telephone instrument of the individual receiving the telephone call placed by the caller.
2. A telecommunications company offering call identification services may not charge any person who requests that the call identification services be blocked on a per-call basis. Per-line blocking must be provided without charge for residential customers and business customers with special needs, such as law enforcement and domestic violence agencies.



3. A telecommunications company offering a call identification service shall notify its subscribers that their calls may be identified to a called party at least thirty days before the service is offered.
4. This section does not apply to:
  - a. An identification service that is used within the same limited system, including a Centrex, Centron, or private branch exchange (PBX) system, as the recipient telephone.
  - b. An identification service that is used on a public agency's emergency telephone line or on a line that receives the primary emergency telephone number (911).
  - c. An identification service provided in connection with legally sanctioned call tracing or tapping procedures.
  - d. An identification service provided in connection with any "700", "800", or "900" access code telecommunications service, or any voice or data store and forward service.
  - e. Any other service that, after investigation by the commission, the commission finds that a nondisclosure or similar agreement will protect the privacy interests of a calling party.

**49-21-01.7. Powers in general.** The commission has the power to:

1. Investigate all methods and practices of telecommunications companies.
2. Require telecommunications companies to conform to the laws of this state and to all rules, regulations, and orders of the commission not contrary to law.
3. Require copies of reports as to rates, prices, and terms and conditions of service in effect and used by the company, and all other information deemed relevant and necessary by the commission in the exercise of its authority.
4. Compel obedience to its lawful orders by proceedings of mandamus or injunction or other proceedings, in the name of the state, in any court having jurisdiction of the parties or of the subject matter.
5. Hold hearings on good cause being shown, upon notice and subject to the provisions of chapter 28-32.
6. Employ and fix the compensation of experts, engineers, auditors, attorneys, and other such assistance for complaints, investigations, and other proceedings relating to telecommunications companies. The expense of any hearings, and the compensation and actual expenses of any employees of the commission while engaged upon any such hearings must, upon the order of the commission, be paid by the telecommunications company involved in such hearings. The commission shall ascertain the exact cost and expenditure. After giving the telecommunications company notice and opportunity to demand a hearing, and after a hearing, if any, is held, the commission may render a bill and make an order for payment. The bill and order must be delivered by certified mail or personal delivery to the managing officer of the telecommunications company. Upon receipt of the bill and order for payment, the telecommunications company has thirty days within which to pay the amount billed. All amounts not paid within thirty days after receipt of the bill and order for payment thereafter draw interest at the rate of six percent per annum. Amounts collected by the commission under this subsection relating to expenses of the regulatory reform review commission must be deposited in the general fund of the

state treasury. All other amounts collected by the commission under this subsection must be deposited in a special account within the public service commission.

7. Act upon an application for a certificate of public convenience and necessity under chapter 49-03.1 consistent with section 253 of the federal act, provided a telecommunications company is not required to obtain a certificate of public convenience and necessity to resell telecommunications services.
8. Mediate or arbitrate agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act.
9. Approve or reject agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act.
10. Receive and approve or reject a statement of generally available terms under section 252(f) of the federal act.
11. Determine whether to terminate a rural telephone company's exemption under section 251(f) of the federal act.
12. Designate telecommunications companies as eligible telecommunications carriers to receive universal service support under sections 214 and 254 of the federal act.
13. Designate geographic service areas for the purpose of determining universal service obligations and support mechanisms under the federal act.
14. Adopt rules consistent with state law as are necessary to carry out the powers in subsections 7 through 13 provided the rules may not impose obligations on a telecommunications company that are different or greater than obligations imposed under the act.

**49-21-01.8. Eligible telecommunications company requirements. A**

telecommunications company may not be an eligible telecommunications carrier unless the company offers all services supported by federal universal service mechanisms throughout the study area.

**49-21-02. Telecommunications companies - Common carriers - Public policy.** All persons providing telecommunications service within this state shall be common carriers and are hereby declared to be affected with a public interest and subject to regulation and general supervision by the commission. Among the purposes to be served by such regulation and supervision are:

1. To make available to all people of this state modern and efficient telecommunications services at the most economic and reasonable cost.
2. To allow the development of competitive markets for telecommunications services where such competition does not unreasonably distract from the efficient provision of telecommunications services to the public, and to lessen regulation in whole or in part of those telecommunications services which become subject to effective competition.
3. To establish and maintain reasonable charges for telecommunications services without unreasonable discrimination, or unfair or destructive competitive practices.
4. To ensure that regulated charges do not include the costs of unregulated activities.
5. To encourage the establishment and maintenance of a strong telecommunications industry.

**49-21-02.1. Authority to exempt from regulation.** Repealed by S.L. 1999, ch. 411, § 13.

**49-21-02.2. Cross-subsidization prohibited.** Revenues obtained from regulated telecommunications services, including essential and nonessential telecommunications services, may not be used to subsidize or otherwise give advantage to a telecommunications company in its unregulated services, and revenues from essential telecommunications services may not be used to subsidize or otherwise give advantage to a telecommunications company in its nonessential telecommunications services. The commission may require a telecommunications company to keep separate books of account, to allocate costs in accordance with procedures established by rule or order of the commission, and to perform other acts that will assist the commission in enforcing this section. The price charged for an unregulated telecommunications service or a nonessential telecommunications service must cover the cost of providing that service.

**49-21-02.3. Directors, trustees, officers, and managers - Immunity from civil liability.** Directors, trustees, and officers of mutual telephone companies, and the manager of a mutual telephone company who is the person most responsible for carrying out the policies and directives of the trustees, officers, or board of directors, are immune from civil liability for any act or omission relating to their service or function as a director, trustee, officer, or manager, unless the act or omission constitutes gross or willful negligence or gross or willful misconduct.

**49-21-02.4. Unauthorized telecommunications service.**

1. A telecommunications company shall comply with the provision of title 47, Code of Federal Regulations, part 64, subpart k, regarding changes in a subscriber's selection of a provider of telecommunications service. The commission shall enforce the provisions of title 47, Code of Federal Regulations, part 64, subpart k.
2. A telecommunications company may not initiate an intrastate telecommunications service to a subscriber without authorization. A subscriber for whom an intrastate telecommunications service is initiated without authorization is absolved from liability for charges imposed by the service provider if the subscriber notifies the service provider within thirty days after the first billing for the unauthorized service. Upon being informed by the subscriber that an unauthorized initiation of service has occurred, the telecommunications company providing the service shall cancel the service, inform the subscriber of the thirty-day absolution period, and refund any payments made by the subscriber for the service during the absolution period. The telecommunications company may rebill for the service provided before cancellation if the company determines the service initiation was authorized. The remedies provided in this section are in addition to any other remedies available at law.
3. If the commission finds an emergency exists that requires ex parte action, the commission may issue a cease and desist order without prior notice against a telecommunications company that the commission has reason to believe is in violation of this section or title 47, Code of Federal Regulations, part 64, subpart k. The cease and desist order must be:
  - a. Directed against the telecommunications company's marketing of telecommunications service, not the company's provision of service to current customers;
  - b. Accompanied by service on the telecommunications company of a commission order opening an investigation or a formal complaint regarding the company's compliance with this section; and
  - c. Accompanied by service on the telecommunications company of a notice of opportunity to be heard on the cease and desist order within fifteen days of issuance of the cease and desist order.

4. A telecommunications company that violates this section is deemed to have committed an unlawful practice in violation of section 51-15-02 and is subject to all the provisions, procedures, and penalties of chapter 51-15.

**49-21-03. Articles of incorporation - Telephone - Telegraph.** Repealed by S.L. 1985, ch. 515, § 26.

**49-21-04. Price schedules filed with the commission.** Each telecommunications company shall file with the commission in such form and detail as it may require, subject to considerations for maintaining trade secrets or commercial confidentiality:

1. Schedules showing all prices, including those prices set by contract and the individual unbundled or unpackaged price of any essential service, in effect at the time for any telecommunications service rendered to the public by such telecommunications company within this state;
2. All rules and regulations which in any manner affect the prices charged or to be charged for such service; and
3. All new prices and any price changes of essential services at least twenty days before the effective date of the new price or price change, unless the commission upon application and for good cause allows a lesser time, and except prices changed in accordance with subsection 1 of section 49-21-01.3, which will be filed at least ten days before the expiration of the thirty-day period mandated in that section. No price or price change is effective until filed in accordance with this chapter.

**49-21-04.1. Maximum and minimum rates - Changes.** Notwithstanding the provisions of section 49-05-05 to the contrary, for a telecommunications company that elects to remain subject to the commission's rate and rate of return regulation, the commission may approve schedules of rates for a service that establishes only maximum rates, only minimum rates, or both minimum and maximum rates. A telecommunications company having such an approved schedule may, with respect to the services covered by the schedule, change its rates after such notice to the public and commission as the commission prescribes.

**49-21-05. Schedule of prices to be on file for public inspection.** The commission may require any telecommunications company to keep on file and accessible to the public, subject to considerations for maintaining trade secrets or commercial confidentiality, at any city in which the telecommunications company has a public office, a schedule of such prices for essential telecommunications services as the commission may deem necessary.

**49-21-06. (Effective through July 31, 2001) Complaint against prices.** There is a rebuttable presumption that prices for essential telecommunications services in effect on July 1, 1989, are fair and reasonable. Any person may complain to the commission, or the commission on its own motion may complain and begin investigation, of the reasonableness, fairness, or adequacy of any price for any essential or nonessential service. Any notice and hearing by the commission will be provided in accordance with chapter 28-32 and the commission can only set aside, after notice and hearing, any price for a service it investigates pursuant to this section which it determines to be unreasonable, unfair, or inadequate. This section must be construed to authorize the commission to set aside any unreasonable, unfair, or inadequate price set by a telecommunications company for the connection between facilities of two or more telecommunications companies and for the transfer of telecommunications. This section may not be construed to authorize the commission to set aside any price in effect on January 1, 1999, for intrastate switched access service provided by any rural telephone company, as defined under Public Law No. 104-104 [110 Stat. 56; 47 U.S.C. 153(37)], upon complaint by an interexchange telecommunications company that the price is unreasonably high, except a price for intrastate switched access service in an exchange may be set aside to the extent it is unreasonably high as a consequence of recovery of costs of intrastate switched access service in that exchange from any explicit federal or state mechanisms to preserve and advance universal service; a sale,

assignment, or other transfer of ownership or control of that exchange after January 1, 1999; or a reduction of prices after January 1, 1999, for any other services provided in that exchange.

**(Effective after July 31, 2001) Complaint against prices.** There is a rebuttable presumption that prices for essential telecommunications services in effect on July 1, 1989, are fair and reasonable. Any person may complain to the commission, or the commission on its own motion may complain and begin investigation, of the reasonableness, fairness, or adequacy of any price for any essential or nonessential service. Any notice and hearing by the commission will be provided in accordance with chapter 28-32 and the commission can only set aside, after notice and hearing, any price for a service it investigates pursuant to this section which it determines to be unreasonable, unfair, or inadequate. This section must be construed to authorize the commission to set aside any unreasonable, unfair, or inadequate price set by a telecommunications company for the connection between facilities of two or more telecommunications companies and for the transfer of telecommunications, provided this section may not be construed to set aside any price set by contract between telecommunications companies and in effect on July 1, 1989, upon complaint by one of the parties to the contract that the price is unreasonably high.

**49-21-07. Discrimination unlawful.** It shall be unlawful for any telecommunications company to make any unjust or unreasonable discrimination in prices, practices, or service for or in connection with like telecommunications service, or give any undue or unreasonable preference or advantage to any person or telecommunications company or to subject any person or telecommunications company to any undue or unreasonable prejudice or disadvantage in the service rendered by it to the public or to a telecommunications company, or to charge or receive for any such service rendered, more or less than the prices provided for in the schedules then on file with the commission. A telecommunications company providing intrastate interexchange message toll services shall charge uniform prices on all routes where it offers such services. A telecommunications company providing local exchange service and message toll and private line services shall cover in its price for message toll and private line services, the price of providing access service in its own exchanges. Nothing in this chapter shall be construed to prevent any telecommunications company from offering or providing volume or other discounts based on reasonable business practices; from introducing promotional offerings, including special incentives, competitive discounts, and price waivers; from passing through any state, municipal or local taxes or fees to the specific geographic areas from which the taxes or fees originate; or from furnishing free telecommunications service or service at reduced prices to its officers, agents, servants, or employees.

**49-21-08. Unnecessary duplication of exchanges prohibited.** Whenever any telecommunications company furnishes adequate local exchange telecommunications service and supplies the reasonable wants of the people of the city or community in which it is operating, and complies with the orders of the commission, the commission shall not grant to any other telecommunications company the right to compete with such telecommunications company in the provision of local exchange telecommunications service until after a public hearing of all parties interested, and a finding by the commission that the public convenience and necessity may require such competing plant. Nothing contained in this chapter shall be held to prevent any telecommunications company from extending its lines within the limits of any city in which it at the time is lawfully operating a local exchange.

**49-21-08.1. Dialing parity - IntraLATA equal access.** The provisioning of dialing parity on an intraLATA basis, otherwise known as 1 + intraLATA equal access, may not be required to be provided by any company providing local exchange service prior to January 1, 2000. Every local exchange carrier shall provide intraLATA dialing parity no later than January 1, 2000.

**49-21-09. Telecommunications - Connections.** Whenever a connection can be made reasonably between the facilities of two or more telecommunications companies for the transfer of telecommunications and public convenience and necessity will be subserved thereby, the commission may require that such connection be made and may order that telecommunications be transmitted and transferred by the companies, as provided in this section. When, after notice and hearing in accordance with chapter 28-32, the commission finds that public convenience and

necessity require the use by one telecommunications company of facilities or services of another telecommunications company, and that such use will not result in irreparable injury to the owner or other users of such facilities or services, nor any substantial detriment to the facilities or services, and that such telecommunications companies have failed to agree upon such use or the terms and conditions or compensation for the same, the commission, by order, may direct that such use be permitted, and may prescribe reasonable compensation, terms, and conditions. If such use is directed, the telecommunications company to which the use is permitted is liable to the owner or other users of such facilities or services for such damage as may result therefrom to the property of such owner or other users thereof.

**49-21-10. Transmitting telecommunications from other telecommunications companies.** Every telecommunications company operating in this state shall receive, transmit, and deliver, without discrimination or delay, the telecommunications of every other telecommunications company with which a connection has been made.

**49-21-10.1. Excessive charges - Refunds.** When complaint has been made to the commission or by the commission on its own motion concerning any price for a telecommunications service, and the commission has found, upon a hearing after notice given as required by law, that the telecommunications company has charged for such service a price in excess of the price permitted under section 49-21-01.3, has discriminated unreasonably, or has otherwise violated a statute, rule, or order, the commission may order that the telecommunications company make due refunds or reparations, with interest from the date of collection.

**49-21-10.2. Quality of service - Procedure and remedies.** Any customer, and the commission on its own motion, may complain concerning the quality of service provided by a telecommunications company providing telecommunications services in the state. Any person, and the commission on its own motion, may complain concerning any violation of law or rule or order of the commission. The commission, pursuant to chapter 28-32, will provide notice of the complaint and the time and place of hearing. Whenever the commission finds, after notice and hearing in accordance with chapter 28-32, that the services of a telecommunications company are inadequate, or the company is in violation of a law, rule, or order, the commission may, in addition to the penalties prescribed in chapter 49-07, direct the telecommunications company to take whatever remedial actions are reasonable and necessary to provide adequate service or to bring the company into compliance with the applicable law, rule, or order. The commission may not adopt any rule or order under this section applicable to retail services unless the standards of service required by the rule or order are applicable to all telecommunications companies providing similar service in the relevant market area.

**49-21-11. Mutual telephone company - Company carrier.** Repealed by S.L. 1985, ch. 515, § 26.

**49-21-12. Assessments - Expenses - Sinking fund.** Repealed by S.L. 1985, ch. 515, § 26.

**49-21-13. Extension of line and system.** Repealed by S.L. 1985, ch. 515, § 26.

**49-21-13.1. Telephone cooperatives - Sale of physical plant - Approval.** No mutual aid cooperative or cooperative association that is a telecommunications company as defined in section 49-21-01 may sell, transfer, or convey, within the period of any single calendar year, physical plant in excess of five percent in value of the cooperative, based upon the most recent audit of the books of the cooperative, unless consent has been obtained by vote of not less than two-thirds of the entire membership of the cooperative cast at any regular or special meeting called for that purpose, after notice in writing to all the membership of the cooperative not less than twenty nor more than thirty days prior to the date of such meeting. Nothing in this section prohibits the transfer of assets in exchange for physical plant of equal monetary value to any public or private person or organization.

**49-21-14. Connections with other telephone systems permitted.** Section 49-21-08 shall not be construed to prohibit any mutual telephone company, corporation, or limited liability company with lines in rural sections from making physical connections with the telephone systems of two or more cities through such lines, as the benefits to its members may merit.

**49-21-15. Physical connections.** Any telephone company operating within a city shall not deny physical connection to any mutual telephone company operating in the community adjoining said city, nor shall any contract between any such companies abridge in any way the rights of either company to extend its lines or to make physical connection with any other telephone company.

**49-21-16. Forfeiture for failure to comply with order.** Repealed by S.L. 1985, ch. 515, § 26.

**49-21-17. Additional definitions.** In section 49-21-18 unless the context or other subject matter otherwise requires:

1. "Emergency" means a situation in which property or human life are in jeopardy and the prompt summoning of aid is essential.
2. "Party line" means a subscribers' line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

**49-21-18. Party line - Refusal to surrender - Emergency.** It shall be unlawful for any person willfully to refuse to yield or surrender the use of a party line to another person when such party line is needed by such other person requesting it for the purpose of permitting such other person to report a fire or summon police, medical, or other aid in case of emergency. It shall also be unlawful for any person willfully to ask for or request the use of a party line on the pretext that an emergency exists, knowing that no emergency in fact exists.

**49-21-19. Distributors of telephone directories to print notice therein.** Every telephone directory distributed to the members of the general public in this state or in any portion thereof which lists the calling numbers of telephones of any telephone exchange located in this state shall contain a notice which explains the offenses prohibited by section 49-21-18. Such notice shall be printed in type which is not smaller than any other type on the same page and be preceded by the word "warning" printed in type at least as large as the largest type on the same page. This section shall not apply to those directories distributed solely for business advertising purposes, commonly known as classified directories.

**49-21-20. Penalty.** Any person who shall violate any of the provisions of sections 49-21-18 and 49-21-19 shall be guilty of a class B misdemeanor.

**49-21-21. Fraudulent telecommunications - Penalty.** Repealed by S.L. 1975, ch. 106, § 673.

**49-21-22. Regulatory reform review commission - Appointments - Compensation - Report to legislative council.** Repealed by S.L. 1991, ch. 600, § 17.

**49-21-22.1. Regulatory reform review commission - Appointments - Compensation - Report to legislative council.** Expired under S.L. 1995, ch. 453, § 2.

**49-21-22.2. Regulatory reform review commission - Appointments - Compensation - Report to legislative council.** The regulatory reform review commission shall review the operation and effect of North Dakota telecommunications law on an ongoing basis during the interims between the 1999 and 2003 legislative sessions and shall submit a report regarding its operation and effect to the legislative council in 2000 and 2002. The regulatory reform review commission may review the effects of federal universal service support mechanisms on telecommunications companies and consumers in this state and may review the preservation

and advancement of universal service in this state, consistent with the Communications Act of 1934 [47 U.S.C. 151 et seq.], as amended by the Telecommunications Act of 1996 [Pub. L. 104-104; 110 Stat. 56] during these interims and may include any findings and recommendations in its reports to the legislative council. The regulatory reform review commission consists of one member of the public service commission who has responsibility for telecommunications regulation, two members of the senate, appointed by the president of the senate, and two members of the house of representatives, appointed by the speaker. The chairman of the legislative council shall designate the chairman and vice chairman of the regulatory reform review commission from the legislative members of the commission. The public service commission shall provide technical assistance and the legislative council shall provide staff services to the regulatory reform review commission. The legislative members of the regulatory reform review commission are entitled to the same compensation as provided for members of committees of the legislative council. The legislative council shall pay the compensation for the legislative members of the regulatory reform review commission. The public service commission shall pay the expenses of the member of the public service commission serving on the regulatory reform review commission and the public service commission staff providing technical assistance while carrying out their duties.

**49-21-23. Construction of facilities - Cost recovery.**

1. A telecommunications company is not required to construct, modify, or extend telecommunications facilities at the request or for the use of another telecommunications company except as required by the federal act.
2. The commission must allow a telecommunications company to recover in advance from the benefited company or customer any nonrecurring costs incurred to comply with a commission order, including any order issued under section 49-21-10.2, for construction modification or extension of the company's network in excess of the normal course of business and primarily for the benefit of another telecommunications company or for a particular customer, and not due to any negligence or misconduct on the part of the company. This subsection does not apply to:
  - a. Costs incurred to extend or modify a network to provide for interconnection, collocation, network access, or the sale of unbundled network elements, unless those costs are identifiable and specific to a particular end-user customer, or wholesale services to another telecommunications company under the federal act;
  - b. Costs incurred to remedy discriminatory or unequal treatment that has been found to exist by the commission or an arbitrator; or
  - c. Costs for which some other recovery treatment is specifically provided in federal or state law.

**49-21-24. Prohibited acts - Arbitration.**

1. A telecommunications company may not:
  - a. Discriminate against another provider of telecommunications services by refusing or delaying access to the company's services;
  - b. Discriminate against another provider of telecommunications services by refusing or delaying access to essential facilities on terms and conditions no less favorable than those the telecommunications company provides to itself and its affiliates. A local telecommunications facility, feature, function, or capability of the telecommunications company's network is an essential facility if all of the following apply:



- (1) Competitors cannot practically or economically duplicate the facility, feature, function, or capability or obtain the facility, feature, function, or capability from another source.
  - (2) The use of the facility, feature, function, or capability by potential competitors is technically and economically feasible.
  - (3) Denial of the use of the facility, feature, function, or capability by competitors is unreasonable.
  - (4) The facility, feature, function, or capability will enable competition; or
- c. Degrade the quality of access or service provided to another provider of telecommunications services.
2. A claim that a telecommunications company has violated this section may be resolved by arbitration or by a complaint filed with the commission. Arbitration of a claim must be conducted by a single arbitrator engaged in the practice of law under the rules of the American arbitration association. All expedited procedures prescribed by the American arbitration association rules apply. The arbitrator's award is final and binding and may be entered in any court having jurisdiction thereof. A complaint filed with the commission must be referred to the office of administrative hearings for hearing and issuance of recommended findings of fact, conclusions of law, and an order pursuant to chapter 28-32. Each party shall bear its own costs and attorney's fees and shall equally share in the fees and expenses of the arbitration or administrative hearing.

**49-21-25. Competitive local exchange companies.** All competitive local exchange companies are subject to the requirements of this chapter regarding purchase of essential telecommunications services, section 49-21-01.4; access code number usage, section 49-21-01.5; call identification services, section 49-21-01.6; cross-subsidization, section 49-21-02.2; price schedules, sections 49-21-04 and 49-21-05; price complaints, section 49-21-06; discrimination, section 49-21-07; dialing parity, section 49-21-08.1; connections, sections 49-21-09 and 49-21-10; refunds, section 49-21-10.1; and quality of service, section 49-21-10.2.

**49-21-26. Fees.** Unless the governing body of a political subdivision has submitted to the qualified electors of that political subdivision the question of whether to impose a fee other than a fee for management costs and a majority of the voters approved the fee, a political subdivision may not impose after December 31, 1998, any fee to recover from a telecommunications company for the use of its right of way, other than a fee for its management costs. If requested by a political subdivision, in order to accomplish a necessary public improvement on the right of way, a telecommunications company promptly shall remove its facilities from the public right of way or shall relocate or adjust its facilities within the public right of way at no cost to the political subdivision. Necessary public improvements are limited to construction and maintenance activities directly related to improved transportation and safety. A political subdivision may recover from a telecommunications company only those management costs caused by the telecommunications company activity in the public right of way. A fee or other obligation under this section must be imposed on a competitively neutral basis. When a political subdivision's management costs cannot be attributed to only one entity, those costs must be allocated among all users of the public rights of way, including the political subdivision itself. The allocation must reflect proportionately the costs incurred by the political subdivision as a result of the various types of uses of the public right of way. This section does not prohibit the collection of a franchise fee as permitted in section 49-21-29.

**49-21-27. In-kind services.** A political subdivision, in lieu of a fee imposed under section 49-21-26, may not require in-kind services by a telecommunications company right-of-way user or require in-kind services as a condition of the use of the political subdivision's public right of way.

#### **49-21-28. Arbitration.**

1. A telecommunications company that is denied the use of or access to a political subdivision right of way, that has its right-of-way permit revoked, or that believes that the fees imposed on that company by the political subdivision do not conform to the requirements of section 49-21-26 may request in writing that the denial, revocation, or fee imposition be reviewed by the governing body of the political subdivision. The governing body of the political subdivision shall act within thirty days of the request. A decision by the governing body affirming the denial, revocation, or fee imposition must be in writing and supported by written findings establishing the reasonableness of the decision.
2. Upon affirmation by the governing body of the denial, revocation, or fee imposition, the telecommunications company may do either of the following:
  - a. With the consent of the governing body, submit the matter to final, binding arbitration. Binding arbitration must be before an arbitrator selected by the political subdivision and the telecommunications company. If the parties are unable to agree on an arbitrator, the matter must be resolved by the three-person arbitration panel made up of one arbitrator selected by the political subdivision, one arbitrator selected by the telecommunications company, and one arbitrator selected by the other two arbitrators. The cost of a single arbitrator must be paid equally by the political subdivision and the telecommunications company. If a three-person arbitration panel is selected, each party shall pay the cost of its own arbitrator, and the parties shall jointly pay the cost of the third arbitrator and of the arbitration. Each party to the arbitration shall pay its own costs, disbursements, and attorney's fees.
  - b. Bring an action in district court to review a decision of the governing body made under this section.

**49-21-29. Franchise ordinance not superseded.** Sections 49-21-26, 49-21-27, and 49-21-28 do not modify or supersede the rights and obligations of a political subdivision and the telecommunications company established by the terms of any existing franchise. A city that collects a city franchise fee under a franchise may not collect a fee from that entity under section 49-21-26. A political subdivision that collects a fee prohibited by section 49-21-26 on January 1, 1999, may continue to collect that fee.

**49-21-30. Cost recovery.** A telecommunications company that is assessed either management costs by a political subdivision pursuant to section 49-21-26 or a city franchise fee pursuant to section 49-21-29 is entitled to recover those costs. If the telecommunications company serves customers within the boundaries of the political subdivision imposing the management costs, the costs may be recovered only from those customers.

## **CHAPTER 49-21.1 ELECTRIC TRANSMISSION LINES**

**49-21.1-01. Definitions.** As used in this chapter:

1. "High voltage" means a voltage in excess of six hundred volts between conductors or between any single conductor and the ground.
2. "Overhead lines or overhead conductors" means electrical conductors installed above the ground, except conductors deenergized and grounded or enclosed in protective conduit or other metal covering.

**49-21.1-01.1. Electricity transmission and distribution lines - Differentiation.**

Except for purposes of transmission facility siting under chapter 49-22 and regulatory accounting including the determination of the demarcation between federal and state jurisdiction over transmission in interstate commerce and local distribution, for purposes of this title and chapters 57-33 and 57-33.1, lines designed to operate at a voltage of 41.6 kilovolts or more are transmission lines, and lines designed to operate at a voltage less than 41.6 kilovolts are distribution lines.

**49-21.1-02. Operations within ten feet prohibited.** No person shall store or erect any tools, machinery, equipment, supplies, materials, apparatus, house, or other building, or any part thereof, within ten feet [3.05 meters] of any high voltage overhead conductor.

**49-21.1-03. Warning sign required on equipment.** No person shall operate any crane, derrick, power shovel, drilling rig, hoisting equipment, or similar apparatus, any part of which is capable of lateral or swinging motion, unless there is posted and maintained in plain view of the operator thereof, a durable warning sign legible at twelve feet [3.66 meters] which reads: "Unlawful to operate this equipment within ten feet [3.05 meters] of high voltage lines". Each day's failure to post or maintain such signs shall constitute a separate violation.

**49-21.1-03.1. Work near high voltage overhead lines - Safety requirements - Notice - Costs.** If any work is performed within six feet [1.83 meters] of any high voltage overhead line, or if mechanical equipment or machinery used near high voltage overhead lines is capable of motion to within ten feet [3.05 meters] of any high voltage overhead line, the person responsible for the work shall notify the operator of the high voltage overhead line of the intent to work near the line. The work may be pursued only after the person and the operator of the line have provided protection for endangered persons by mechanical or insulated barriers, by deenergizing and grounding the line, or by temporary relocation of the line. The person working near the overhead line must pay the operator actual expenses necessary to meet the requirements of this chapter, except that the operator of the line is responsible for the cost if the line was installed closer to an existing fixture or structure than the minimum clearance required by the latest edition of the national electrical safety code, as adopted by the public service commission. The operator of the line need not take the precautions until the person working near the line pays the necessary expenses. Within five business days after payment of those expenses, or as otherwise agreed upon in writing by the person responsible for the work, the operator of the line shall complete the arrangements for protection of endangered persons.

**49-21.1-04. Penalty.** Any person who violates this chapter is subject to a civil penalty not to exceed one thousand dollars. The civil penalty may be recovered by action prosecuted by the state's attorney of the county where the violation occurred.

**49-21.1-05. Exceptions.** This chapter does not apply to:

1. Construction, reconstruction, operation, or maintenance of any high voltage overhead conductor, supporting structure, or appurtenances for the support or

operation of a high voltage conductor by persons authorized by the owner or operator.

2. Work on telecommunications, coaxial, signaling, and other communication circuits or their supporting structures, or other circuits and their supporting structures which are not high voltage.
3. The operation or maintenance of railroad equipment or vehicles on fixed rails or railroad right of way.
4. Work by any employee of an industrial plant on the electrical system of the plant.
5. Work by any employee of an electrical or communications contractor performed under the employer's supervision.
6. The operation of highway vehicles, agricultural equipment, or agricultural aircraft which in normal use may incidentally pass within the ten-foot [3.05-meter] clearance limitation.
7. Governmental entities responding to an emergency situation.
8. Work by any employee of a surface coal mining company in the course of coal mining activities.
9. The state and its agencies.

## **CHAPTER 49-22**

### **ENERGY CONVERSION AND TRANSMISSION FACILITY SITING ACT**

**49-22-01. Short title.** This chapter may be cited as the "North Dakota Energy Conversion and Transmission Facility Siting Act".

**49-22-02. Statement of policy.** The legislative assembly finds that the construction of energy conversion facilities and transmission facilities affects the environment and the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment and upon the welfare of the citizens of this state by providing that no energy conversion facility or transmission facility shall be located, constructed, and operated within this state without a certificate of site compatibility or a route permit acquired pursuant to this chapter. The legislative assembly hereby declares it to be the policy of this state to site energy conversion facilities and to route transmission facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy, sites and routes shall be chosen which minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

**49-22-03. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Certificate" means the certificate of site compatibility or the certificate of corridor compatibility issued under this chapter.
2. "Commission" means the North Dakota public service commission.
3. "Construction" includes any clearing of land, excavation, or other action that would affect the environment of the site after April 9, 1975, but does not include activities incident to preliminary engineering or environmental studies.
4. "Corridor" means the general location of a transmission facility.
5. "Energy conversion facility" means any plant, addition, or combination of plant and addition, designed for or capable of:
  - a. Generation of fifty thousand kilowatts or more of electricity;
  - b. Manufacture or refinement of one hundred million cubic feet [2831684.66 cubic meters] or more of gas per day, regardless of the end use of the gas;
  - c. Manufacture or refinement of fifty thousand barrels [7949.36 cubic meters] or more of liquid hydrocarbon products per day; or
  - d. Enrichment of uranium minerals.
6. "Facility" means an energy conversion facility, transmission facility, or both.
7. "Permit" means the permit for the construction of a transmission facility within a designated corridor issued under this chapter.
8. "Person" includes any individual, firm, association, partnership, cooperative, corporation, limited liability company, or any department, agency, or instrumentality of a state or of the federal government, or any subdivision thereof.

9. "Power emergency" means an electric transmission line and associated facilities that have been damaged or destroyed by natural or manmade causes resulting in a loss of power supply to consumers of the power.
10. "Route" means the specific location of a transmission facility within a designated corridor.
11. "Site" means the location of an energy conversion facility.
12. "Transmission facility" means any of the following:
  - a. An electric transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts. "Transmission facility" does not include a temporary transmission line loop that is:
    - (1) Connected and adjacent to an existing transmission facility that was sited under this chapter;
    - (2) Within the corridor of the sited facility and does not cross known exclusion or avoidance areas;
    - (3) Less than one mile [1.61 kilometers] long; and
    - (4) In place for less than one year.
  - b. A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide. This subdivision does not apply to an oil or gas pipeline gathering system. For purposes of this chapter, a gathering system includes the pipelines and associated facilities used to collect oil from the lease site to the first pipeline storage site where pressure is increased for further transport, or pipelines and associated facilities used to collect gas from the well to the gas processing facility.
  - c. A liquid transmission line and associated facilities designed for or capable of transporting water from or to an energy conversion facility.
13. "Utility" means any person engaged in and controlling the generation, manufacture, refinement, or transmission of electric energy, gas, liquid hydrocarbons, or liquid hydrocarbon products, including electric power generation or transmission, coal gasification, coal liquefaction, petroleum refinement, uranium enrichment, and the transmission of coal, gas, liquid hydrocarbons, or liquid hydrocarbon products, or the transmission of water from or to any energy conversion facility.

**49-22-04. Ten-year plans - Contents.** Every utility that owns or operates, or plans within the next ten years to own, operate, or start construction on any facility shall annually develop a ten-year plan as specified in this section. On or before July first of each year, the utility shall submit its ten-year plan to the commission. The ten-year plan may be appropriate portions of a single regional plan or may be jointly prepared and submitted by two or more utilities and must contain the following information:

1. A description of the general location, size, and type of all facilities to be owned or operated by the utility during the ensuing ten years, as well as those facilities to be removed from service during the ten-year period.
2. An identification of the location of the tentative preferred site for all energy conversion facilities and the tentative location of all transmission facilities on which construction is intended to be commenced within the ensuing five years and such other information as may be required by the commission. The site and corridor

identification shall be made in compliance with the criteria published by the commission pursuant to section 49-22-05.1.

3. A description of the efforts by the utility to coordinate the plan with other utilities so as to provide a coordinated regional plan for meeting the utility needs of the region.
4. A description of the efforts to involve environmental protection and land-use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process.
5. A statement of the projected demand for the service rendered by the utility for the ensuing ten years and the underlying assumptions for the projection, with that information being as geographically specific as possible, and a description of the manner and extent to which the utility will meet the projected demands.
6. Any other relevant information as may be requested by the commission.

Upon receipt of the ten-year plans the commission shall proceed to assess the impact of the development proposed within the state to ensure that energy conversion facilities and transmission facilities will be sited in an orderly manner compatible with environmental preservation and efficient use of resources.

**49-22-05. Inventory of potential sites - Criteria - Public hearings.** Repealed by S.L. 1977, ch. 447, § 16.

**49-22-05.1. Exclusion and avoidance areas - Criteria.** The commission shall develop criteria to be used in identifying exclusion and avoidance areas and to guide the site, corridor, and route suitability evaluation and designation process. Except for transmission lines in existence before July 1, 1983, areas within five hundred feet [152.4 meters] of an inhabited rural residence must be designated avoidance areas. This criterion does not apply to a water pipeline. The five hundred foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing. The criteria may also include an identification of impacts and policies or practices which may be considered in the evaluation and designation process.

**49-22-06. Facility development plans.** Repealed by S.L. 1977, ch. 447, § 16.

**49-22-07. Certificate of site compatibility or route permit required.** A utility may not begin construction of an energy conversion facility or transmission facility in the state, or exercise the right of eminent domain in connection with that construction, without first having obtained a certificate of site compatibility or a route permit from the commission pursuant to this chapter. The facility must be constructed, operated, and maintained in conformity with the certificate or permit and any terms, conditions, or modifications of the certificate or permit. A certificate or permit may be transferred, subject to the approval of the commission, to any person who agrees to comply with its terms, conditions, and modifications.

If a power emergency exists which necessitates the relocation of a portion of an electric transmission line and associated facilities from the designated route, the owner of the line shall give telephonic notice to the commission in advance of the relocation. The line may then be relocated to restore power as soon as practicable. After the line has been relocated, the owner shall file with the commission a request to approve the relocated route.

**49-22-07.1. Letter of intent prior to construction.** Every utility which plans to construct any energy conversion or transmission facility within this state shall submit a letter of intent to the commission in the form and manner prescribed by the commission.

**49-22-07.2. Waiver of procedures and time schedules.** Any utility which proposes to construct an energy conversion facility or a transmission facility within the state may make an application to the commission for a waiver of any of the procedures or time schedules set forth in

this chapter or in the rules adopted pursuant to this chapter. The commission, after hearing and upon a finding that the proposed facility is of such length, design, location, or purpose that it will produce minimal adverse effects, or, after hearing and upon a finding that a demonstrable emergency exists which requires immediate construction and that adherence to the procedures and time schedules would jeopardize the utility's system, may issue an order waiving specified procedures and time schedules required by this chapter or by the rules adopted pursuant to this chapter, including, but not limited to, applications, notices, and hearings, and may forthwith issue a certificate of site compatibility, a certificate of corridor compatibility, or a route permit, with such conditions as the commission may require.

**49-22-08. Application for a certificate - Notice of filing - Amendment - Designation of a site or corridor.**

1. An application for a certificate shall be in such form as the commission may prescribe, containing the following information:
  - a. A description of the size and type of facility.
  - b. A summary of any studies which have been made of the environmental impact of the facility.
  - c. A statement explaining the need for the facility.
  - d. An identification of the location of the preferred site for any energy conversion facility.
  - e. An identification of the location of the preferred corridor for any transmission facility.
  - f. A description of the merits and detriments of any location identified and a comprehensive analysis with supporting data showing the reasons why the preferred location is best suited for the facility.
  - g. A description of mitigative measures that will be taken to minimize all foreseen adverse impacts resulting from the location, construction, and operation of the proposed facility.
  - h. An evaluation of the proposed site or corridor with regard to the applicable considerations set out in section 49-22-09 and the criteria established pursuant to section 49-22-05.1.
  - i. Such other information as the applicant may consider relevant or the commission may require.
2. After determining that the application is complete, the commission shall serve a notice of filing of the application on such persons and agencies that the commission may deem appropriate and shall publish a notice of filing of the application in the official newspaper of each county in which any portion of the site or corridor is proposed to be located.
3. A copy of the application shall be furnished to any person or agency, upon request to the commission within thirty days of either service or publication of the notice of filing.
4. An application for an amendment of a certificate shall be in such form and contain such information as the commission shall prescribe.
5. The commission may designate a site or corridor for a proposed facility following the study and hearings provided for in this chapter. Any designation shall be made in



accordance with the evidence presented at the hearings, an evaluation of the information provided in the application, the criteria established pursuant to section 49-22-05.1, and the considerations set out in section 49-22-09 in a finding with reasons for the designation, and shall be made in a timely manner no later than six months after the filing of a completed application for a certificate of site compatibility or no later than three months after the filing of a completed application for a certificate of corridor compatibility. The time for designation of a site or corridor may be extended by the commission for just cause. The failure of the commission to act within the time limits provided in this section shall not operate to divest the commission of jurisdiction in any certification proceeding. The commission shall indicate the reasons for any refusal of designation. Upon designation of a site or corridor, the commission shall issue a certificate of site compatibility or a certificate of corridor compatibility with such terms, conditions, or modifications deemed necessary.

**49-22-08.1. Application for a permit - Notice of filing - Amendment - Designation of a route.**

1. An application for a route permit for a transmission facility within a designated corridor shall be filed no later than two years after the issuance of the certificate and shall be in such form as the commission may prescribe, containing the following information:
  - a. A description of the type, size, and design of the proposed facility.
  - b. A description of the location of the proposed facility.
  - c. An evaluation of the proposed route with regard to the applicable considerations set out in section 49-22-09 and the criteria established pursuant to section 49-22-05.1.
  - d. A description of mitigative measures that will be taken to minimize all foreseen adverse impacts resulting from the location, construction, and operation of the proposed facility.
  - e. A description of the right-of-way preparation and construction and reclamation procedures.
  - f. A statement setting forth the manner in which:
    - (1) The utility will inform affected landowners of easement acquisition, and necessary easement conditions and restrictions.
    - (2) The utility will compensate landowners for easements, without reference to the actual consideration to be paid.
  - g. Such other information as the utility may consider relevant or the commission may require.
2. After determining that the application is complete, the commission shall serve a notice of filing of the application on such persons and agencies that the commission may deem appropriate and shall publish a notice of filing of the application in the official newspaper of each county in which any portion of the designated corridor is located.
3. A copy of the application shall be furnished to any person or agency, upon request to the commission within thirty days of either service or publication of the notice of filing.

4. An application for an amendment of a permit shall be in such form and contain such information as the commission shall prescribe.
5. The commission shall designate a route for the construction of a transmission facility following the study and hearings provided for in this chapter. This designation shall be made in accordance with the evidence presented at the hearings, an evaluation of the information provided in the application, the criteria established pursuant to section 49-22-05.1, and the considerations set out in section 49-22-09 in a finding with reasons for the designation, and shall be made in a timely manner no later than six months after the filing of a completed application. The time for designation of a route may be extended by the commission for just cause. The failure of the commission to act within the time limit provided in this section shall not operate to divest the commission of jurisdiction in any permit proceeding. Upon designation of a route the commission shall issue a permit to the applicant with such terms, conditions, or modifications deemed necessary.

**49-22-09. Factors to be considered in evaluating applications and designation of sites, corridors, and routes.** The commission shall be guided by, but is not limited to, the following considerations, where applicable, to aid the evaluation and designation of sites, corridors, and routes:

1. Available research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment.
2. The effects of new energy conversion and transmission technologies and systems designed to minimize adverse environmental effects.
3. The potential for beneficial uses of waste energy from a proposed energy conversion facility.
4. Adverse direct and indirect environmental effects which cannot be avoided should the proposed site or route be designated.
5. Alternatives to the proposed site, corridor, or route which are developed during the hearing process and which minimize adverse effects.
6. Irreversible and irretrievable commitments of natural resources should the proposed site, corridor, or route be designated.
7. The direct and indirect economic impacts of the proposed facility.
8. Existing plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed site, corridor, or route.
9. The effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites.
10. The effect of the proposed site or route on areas which are unique because of biological wealth or because they are habitats for rare and endangered species.
11. Problems raised by federal agencies, other state agencies, and local entities.

**49-22-09.1. Approval of hydroelectric transmission facilities by legislative assembly required.** After compliance with the applicable requirements of this chapter, any hydroelectric transmission facility that transmits hydroelectric power produced outside the United States, and which crosses any portion of this state, must have the approval of the legislative assembly by concurrent resolution. A person may not begin construction of a hydroelectric transmission facility in this state that transmits hydroelectric power produced outside the United

States, or exercise the right of eminent domain in connection with such construction, without first having complied with this chapter and obtained the approval of the legislative assembly. This section shall not apply to any transmission facility for which a route permit and certificate of corridor compatibility has been issued prior to July 1, 1985, or any extension thereof issued after July 1, 1985.

**49-22-10. Designation of sites and corridors.** Repealed by S.L. 1979, ch. 504, § 15.

**49-22-11. Approval of a specific transmission facility route within a designated corridor.** Repealed by S.L. 1979, ch. 504, § 15.

**49-22-12. Emergency certification.** Repealed by S.L. 1977, ch. 447, § 16.

**49-22-12.1. Emergency certification.** Repealed by S.L. 1979, ch. 504, § 15.

**49-22-13. Public hearings - Notice.**

1. The commission shall hold a public hearing in each county in which any portion of a site, corridor, or route is proposed to be located in an application for a certificate or a permit. At the public hearing, any person may present testimony or evidence relating to the information provided in the application, the criteria developed pursuant to section 49-22-05.1, and the factors to be considered pursuant to section 49-22-09. When more than one county is involved, the commission may hold a consolidated hearing in one or more of the affected counties. A hearing for any county shall not be consolidated if five or more affected landowners in such county file a petition with the commission within ten days of the publication of the notice of hearing.
2. The commission shall not be required to hold a public hearing on an application for the transfer of a certificate or a permit, or an application for a waiver of procedures and time schedules, but shall publish a notice of opportunity for a public hearing in the official newspaper of each county in which any portion of the facility or the proposed site, corridor, or route is located. If requested by any interested person and good cause has been shown therefor, the commission shall hold a public hearing. Where more than one county is involved, the commission may hold a consolidated hearing in one or more of the affected counties.
3. One or more public hearings shall be held at a location or locations determined by the commission concerning the following matters:
  - a. A substantial or material change in the criteria established pursuant to section 49-22-05.1.
  - b. A substantial or material change in the rules adopted pursuant to section 49-22-18.
  - c. The revocation or suspension of a certificate or permit.
4. Notice of a public hearing shall be given by the commission by service on such persons and agencies that the commission may deem appropriate and twice by publication, once at least twenty days prior to such hearing and a second time within twenty days prior to such hearing. Notice of a public hearing and notice of opportunity for a public hearing on an application for a certificate, a permit, a transfer, or a waiver shall be given at the expense of the applicant. In an emergency the commission, in its discretion, may notice a hearing upon less than twenty days.

**49-22-14. Advisory committees - Appointment - Compensation.** The commission may appoint one or more advisory committees to assist it in carrying out its duties under this chapter. Committees appointed to evaluate sites or corridors considered for designation shall be composed of as many persons as may be appointed by the commission, but shall include a

majority of public representatives; at least one representative from the state department of agriculture, a public or municipally owned utility, a private investor-owned utility, and a cooperatively owned utility; and one representative from each county and city in which an energy conversion facility or transmission facility is proposed to be located. Members of advisory committees shall be reimbursed, within the limits of legislative appropriations, for any necessary expenses in the amounts provided by law for state officials.

**49-22-14.1. Cooperation with state and federal agencies.** The commission may, and is encouraged to, cooperate with and receive and exchange technical information and assistance from and with any department, agency, or officer of any state or of the federal government to eliminate duplication of effort, to establish a common data base, or for any other purpose relating to the provisions of this chapter and in furtherance of the statement of policy contained herein.

**49-22-15. Public participation - Meetings - Records.** Repealed by S.L. 1979, ch. 504, § 15.

**49-22-16. Effect of issuance of certificate or permit - Local land use, zoning, or building rules, regulations, or ordinances - State agency rules.**

1. The issuance of a certificate of site compatibility or a route permit shall, subject to subsections 2 and 3, be the sole site or route approval required to be obtained by the utility.
2. A certificate of site compatibility for an energy conversion facility shall not supersede or preempt any local land use, zoning, or building rules, regulations, or ordinances and no site shall be designated which violates local land use, zoning, or building rules, regulations, or ordinances. A permit for the construction of a transmission facility within a designated corridor may supersede and preempt any local land use, zoning, or building rules, regulations, or ordinances upon a finding by the commission that such rules, regulations, or ordinances, as applied to the proposed route, are unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of their location. Without such a finding by the commission, no route shall be designated which violates local land use, zoning, or building rules, regulations, or ordinances.
3. Utilities subject to this chapter shall obtain state permits that may be required to construct and operate energy conversion facilities and transmission facilities. A state agency in processing a utility's facility permit application shall be bound to the decisions of the commission with respect to the site designation for the energy conversion facility or the corridor or route designation for the transmission facility and with respect to other matters for which authority has been granted to the commission by this chapter.
4. No site or route shall be designated which violates the rules of any state agency. A state agency with jurisdiction over any aspect of a proposed facility shall present the position of the agency at the public hearing on an application for a certificate, a permit, or a waiver, which position shall clearly state whether the site, corridor, or route being considered for designation will be in compliance with such agency's rules. For purposes of this chapter it shall be presumed that a proposed facility will be in compliance with a state agency's rules if such agency fails to present its position on the proposed site, corridor, or route at the appropriate public hearing.

**49-22-16.1. Unfair tactics in acquiring land or easements for a facility - Court action - Cancellation of easement - Penalty.**

1. Any person employed by a public utility to acquire easements for a facility subject to this chapter shall not use any harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics to induce the owner of the land to be affected by the facility to grant or agree to any easements.

2. If at least five landowners aggrieved by the conduct of a person or persons, acting on behalf of the same utility, acquiring easements for a site or route of a facility allege use of harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics by the person or persons acquiring or attempting to acquire the easement, an action may be brought in the appropriate district court.
3. Upon a determination by the court that the person or persons employed by the utility used harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics in acquiring or attempting to acquire an easement from at least five separate landowners, the court shall, by order, declare the easements void and may order any compensation paid therefor returned to the offending utility, or allow the landowner to retain such compensation, or award to the landowner up to three times the amount of the compensation involved as damages, punitive or compensatory. The court shall award costs and reasonable attorney's fees to the plaintiffs when the court rules in favor of the plaintiffs.
4. Upon a determination by the court that the utility involved did knowingly allow, encourage, or operate in active consort or participation with such person or persons utilizing such unfair tactic, the court shall cause a copy of its memorandum opinion or order to be filed with the commission.
5. Upon receiving a copy of a memorandum opinion or order issued by a district court pursuant to this section, the commission may revoke or suspend the permit issued with respect to the route affecting the aggrieved landowners. If a permit has not been issued with respect to a site or route affecting the aggrieved landowners, the commission may refuse to issue a permit for such portion of the route.

**49-22-16.2. Easements for a facility - Terms.** Any easement for an electric transmission facility as defined in this chapter acquired contractually by a utility after July 1, 1979, shall give the landowner the option of receiving a single sum payment for the easement or receiving payment in annual installments of equal amounts including interest on the outstanding balance to be paid by the utility at a rate equal to the average rate paid during that year by the Bank of North Dakota on a certificate of deposit in an amount equal to the outstanding balance. The first annual installments shall be prorated to July first and all following annual installments shall fall due on July first. The option provided herein shall not apply to any easement providing for compensation of less than five thousand dollars. In the event the landowner elects to receive the compensation in annual payments, the benefits unpaid at the time of sale of the real estate to which the easement attaches shall accrue to the purchaser of said real estate thereafter. The utility right-of-way agent shall inform the property owner of the owner's option to choose annual installments.

**49-22-17. Improvement of sites or locations.** Utilities which have acquired an energy conversion facility site or transmission line route in accordance with the provisions of this chapter may proceed to construct or improve such site or route for the intended purposes at any time, subject to subsections 2 and 3 of section 49-22-16; provided, that if such construction and improvement commences more than four years after a certificate or permit for the site or route has been issued, then the utility must certify to the commission that such site or route continues to meet the conditions upon which the certificate of site compatibility or transmission facility construction permit was issued.

**49-22-18. Rules and regulations.** The commission shall adopt rules and regulations in conformity with the provisions of this chapter and to prescribe methods and procedures required therewith.

**49-22-19. Hearing - Judicial review.** Any party aggrieved by the issuance of a certificate of site compatibility or transmission facility construction permit from the commission, certification of continuing suitability filed by a utility with the commission, or promulgation of a final order by the commission, may request a rehearing by the commission. The hearing shall be

conducted pursuant to chapter 28-32. There shall be a right of appeal to the district court from any adverse ruling by the commission.

**49-22-20. Revocation or suspension of certificate or permit.** A certificate of site compatibility or permit for the construction of a transmission facility may be revoked or suspended for:

1. Any material false statement in the application or in accompanying statements or studies required of the applicant.
2. Failure to comply with the certificate or permit or any terms, conditions, or modifications contained therein.
3. Violation of the provisions of this chapter or rules or regulations issued pursuant to this chapter by the commission.
4. A determination by a district court pursuant to section 49-22-16.1.

**49-22-21. Penalties.**

1. Any person required by this chapter to have a certificate or permit who willfully begins construction of an energy conversion facility or transmission facility without previously securing a certificate or permit as prescribed by this chapter, or who willfully constructs, operates, or maintains an energy conversion facility or transmission facility other than in compliance with the certificate or permit and any terms, conditions, and modifications contained therein is guilty of a class A misdemeanor.
2. Any person who willfully violates any regulation issued or approved pursuant to this chapter or who willfully falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this chapter shall be guilty of a class A misdemeanor.
3. Any person who willfully engages in any of the following conduct shall be subject to a civil penalty of not to exceed ten thousand dollars for each such violation for each day that such violations persist, except that the maximum penalty may not exceed two hundred thousand dollars for any related series of violations:
  - a. Begins construction of an energy conversion facility or a transmission facility without having been issued a certificate or permit pursuant to this chapter.
  - b. Constructs, operates, or maintains an energy conversion facility or a transmission facility other than in compliance with the certificate or permit and any terms, conditions, or modifications contained therein.
  - c. Violates any provision of this chapter or any rule adopted by the commission pursuant to this chapter.
  - d. Falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained pursuant to a certificate or permit issued pursuant to this chapter.

The civil penalty provided for in this subsection may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise shall be deposited in the general fund and, if not paid, may be recovered in a civil action in the courts of the state.

4. Notwithstanding any other provision of this chapter, the commission may, by injunctive procedures, without bond or other undertaking, proceed against any

person who willfully engages in any conduct described in subsection 3. No liability shall accrue to the commission or its authorized representative in proceeding against any person pursuant to this section.

**49-22-22. Application fees - Additional fees - Deposit in general fund.**

1. Every applicant for a certificate of site compatibility shall pay to the commission an application fee in an amount equal to five hundred dollars for each one million dollars of investment in the proposed facility as defined in the federal energy regulatory commission uniform system of accounts. Every applicant for a certificate of corridor compatibility shall pay to the commission an application fee in an amount equal to five thousand dollars for each one million dollars of investment in the proposed facility as defined in the federal energy regulatory commission uniform system of accounts. Every applicant for a waiver shall pay to the commission an application fee in the amount which would be required for an application for a certificate of site or corridor compatibility for the proposed facility. If a waiver is not granted for a proposed facility, such application fee paid shall be allowed as a credit against fees payable under this section in connection with an application under this chapter for a certificate or permit for the proposed facility. The application fee under this subsection shall not be less than five thousand dollars nor more than one hundred fifty thousand dollars. The commission shall specify the time and manner of payment of the application fee.
2. The applicant shall pay such additional fees as are reasonably necessary for completion of the energy conversion facility site, transmission facility corridor, or transmission facility route evaluation and designation process by the commission. The commission shall specify the time and method of payment of any additional fees and shall refund the portion of such additional fees received from the applicant for completion of the site, corridor, or route evaluation and designation process which exceeds the expenses incurred for the evaluation and designation process. In no event shall the application fee under subsection 1 and any additional fees required of the applicant under this subsection exceed an amount equal to one thousand dollars for each one million dollars of investment in a proposed energy conversion facility or ten thousand dollars for each one million dollars of investment in a proposed transmission facility.
3. All fees collected under the provisions of this chapter shall be deposited in the general fund.

**49-22-23. Transfer.** Repealed by S.L. 1977, ch. 447, § 16.

## **CHAPTER 49-23**

### **ONE-CALL EXCAVATION NOTICE SYSTEM**

**49-23-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Abandoned" means no longer in service and physically disconnected from a portion of the facility or from any other facility that is in use or still carries services.
2. "Board" means the board of directors of the nonprofit corporation governing the notification center under section 49-23-03.
3. "Careful and prudent manner" means excavating within twenty-four inches [60.96 centimeters] of the outer edges of an underground facility located manually and marked by the owner or operator by stakes, paint, or other customary manner, and supporting and protecting the uncovered facility.
4. "Damage" means:
  - a. Substantial weakening of structural or lateral support of an underground facility;
  - b. Penetration, impairment, or destruction of any underground protective coating, housing, or other protective device; or
  - c. Impact with or the partial or complete severance of an underground facility to the extent that the facility operator determines that repairs are required.
5. "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, and demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.
6. "Emergency responder" means a fire department, a law enforcement officer, or other emergency rescue service.
7. "Excavation" means any operation in which earth, rock, or other materials in or below the ground is moved or otherwise displaced by means of hand or power tools, power equipment, or explosives and includes grading, trenching, digging, ditching, drilling, augering, tunneling, boring, scraping, and cable or pipe plowing and driving. The term does not include:
  - a. Opening a grave in a cemetery.
  - b. Plowing, cultivating, planting, harvesting, and similar operations in connection with agricultural activities, unless any of these activities disturbs the soil to a depth of eighteen inches [45.72 centimeters] or more.
  - c. Gardening and landscaping unless it disturbs the soil to a depth of twelve inches [30.48 centimeters] or more.
  - d. Normal maintenance of roads and streets if the maintenance does not change the original grade and does not involve the road ditch.
  - e. Normal repair and maintenance of track and track bed by a railroad on its own right of way.
8. "Excavator" means a person who conducts excavation.



9. "Holiday" means New Year's Day, Martin Luther King Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. When a holiday falls on a Saturday, it is observed on the preceding Friday as if the Friday were the holiday, and when a holiday falls on a Sunday, it is observed on the following Monday as if the Monday were the actual holiday.
10. "Local governmental unit" means a county, township, or city.
11. "Locate" means an operator's markings of an underground facility.
12. "Nonprofit corporation" means a corporation established under chapter 10-33.
13. "Notification center" means a center that receives notice from an excavator of planned excavation or any other request for location and transmits this notice to a participating operator.
14. "Operator" means a person who owns or operates an underground facility, including a master meter operator with underground facilities, or a state or local governmental entity. The department of transportation is not considered an operator for the department's facilities buried on the department's rights of way. A person is not considered an operator solely because the person is an owner or tenant of real property where underground facilities are located if the underground facilities are used exclusively to furnish services or commodities on that property.
15. "Underground facility" means an underground line, facility, system, and its appurtenances used to produce, store, convey, transmit, or distribute communications, data, electricity, power, television signals, heat, gas, oil, petroleum products, water, steam, sewage, hazardous liquids, and other similar substances. Privately owned and operated underground facilities which do not extend beyond the boundary of the private property are excluded.
16. "Unexpected occurrence" includes a fire, flood, earthquake or other soil or geologic movement, riot, accident, damage to a subsurface installation requiring immediate repair, or sabotage.
17. "Water" includes potable water, wastewater, and storm water.

**49-23-02. Notice to excavators and underground facility operators.** A local governmental entity that issues permits for an activity involving excavation shall display an excavator's and operator's notice at the location where permits are obtained. An excavator's and operator's notice and a copy of this chapter must be furnished to each person obtaining a permit for excavation. The notification center shall prescribe an excavator's and operator's notice. The notice must inform excavators and operators of their obligation to comply with this chapter. The center shall furnish to local governmental units:

1. A copy of the notice and this chapter;
2. A copy of the display required under this section; and
3. The telephone number and mailing address of the notification center.

**49-23-03. Notification center - Participation - Establishment.**

1. An operator shall participate in and share in the costs of the statewide notification center operated by a vendor selected under this section.

2. An excavator licensed under this chapter shall participate in and share in the costs of a statewide notification center on a per-call basis. An operator, installing the operator's own facilities, may not be charged as an excavator.
3. An operator shall participate in and share the costs of the one-call excavation notice system by:
  - a. Submitting the information required by the notification center to allow the center to notify the operator of excavation activity;
  - b. Updating the information provided to the notification center on a timely basis;
  - c. Installing and paying for equipment reasonably requested by the notification center to facilitate receipt of notice of excavation from the center;
  - d. Paying the costs charged by the notification center on a timely basis; and
  - e. Receiving and responding to excavation notices, including emergency notices.
4. A nonprofit corporation shall govern the notification center. The initial incorporators of the corporation may solicit bids for any services provided for the operation of the center. The corporation shall provide advance notice of the first organizational meeting by publication in qualified legal newspapers and in appropriate trade journals and by written notice to all appropriate trade associations.
  - a. The nonprofit corporation must be incorporated by seventeen initial incorporators, with one member representing the house of representatives and one member representing the senate appointed by the legislative council, one member representing telecommunications companies offering local exchange service to fewer than fifty thousand subscribers, one member representing telecommunications companies offering local exchange service to fifty thousand or more subscribers, one member representing rural water systems, one member representing rural electric cooperatives, one member representing investor-owned electric utilities, one member representing investor-owned natural gas utilities, one member representing cable television systems, one member representing cities with a population of fewer than five thousand, one member representing cities with a population of at least five thousand, one member representing counties, one member representing underground interstate carriers of gas, one member representing interstate carriers of petroleum, one member representing interstate carriers of telecommunications services, one member representing contractors who perform excavation services, and one member representing the production sector of the American petroleum institute. The initial incorporators must represent and be designated by operators, excavators, and other persons eligible to participate in the center. The legislative members are entitled to the same compensation and expenses as provided for members of committees of the legislative council. The legislative council shall pay the compensation for the legislative members.
  - b. The initial incorporators shall establish, before August 1, 1996, a board of directors of the nonprofit corporation which consists of eight members representing the participants in the center. The board shall establish a competitive bidding procedure to select a vendor to provide the notification service, establish a procedure by which members of the center share the costs of the center on a fair, reasonable, and nondiscriminatory basis, and do all other things necessary to implement the purpose of the center. Any agreement between the center and a vendor for the notification service may be modified from time to time by the board, and any agreement shall be reviewed by the board at least once every three years, with an opportunity to receive new bids,

if desired, by the board. An operator may submit a bid and be selected to contract to provide the notification center service.

- c. Members of the board and any of its agents are immune from any liability of any kind based on any acts or omissions in the course of the performance of responsibilities in an official capacity except for bodily injury arising out of accidents caused by or contributed to by the negligence of the board member or agent.
- d. The board shall aid the state's attorneys of the various counties in the enforcement of this chapter and the prosecution of any violations. The board may institute a civil action for an injunction to enjoin violations of this chapter without proof that anyone suffered actual damages.
- e. The notification center must be in operation by March 1, 1998.

#### **49-23-04. Excavation.**

1. Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice at least forty-eight hours before beginning any excavation, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator. If an operator determines more time is necessary for location, the operator may request a twenty-four-hour extension of the excavation or location notice by notifying the notification center. The notification center shall notify the excavator of the extension. An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice. The notice must contain:
  - a. The name, address, and telephone number of the person making the notification;
  - b. The name, address, and telephone number of the excavator;
  - c. The date and time when excavation is scheduled to begin;
  - d. The depth of planned excavation;
  - e. The type and extent of excavation being planned, including whether the excavation involves tunneling or horizontal boring;
  - f. Whether the use of explosives is anticipated and any other information as may be required by the notification center; and
  - g. The location of the excavation by any one or more of the following means:
    - (1) A specific street address;
    - (2) A reference to a platted lot number of record; or
    - (3) A specific quarter section by section number, range, township, and county. In this case, the location shall be further described by coordinates measured in feet from the nearest one-fourth corner or section corner.
2. The notification center shall:
  - a. Provide a toll-free telephone number and assign an inquiry identification number to each excavation notice and retain a record of all excavation notices received for at least six years.

- b. Immediately transmit the information contained in an excavation notice to every operator that has an underground facility in the area of the proposed excavation.
  - c. Inform the persons giving notice of an intent to engage in an excavation activity the names of participating operators of underground facilities to whom the notice will be given.
  - d. Establish procedures for assuring positive response from the affected operator in all emergency excavation notices.
- 3.
- a. An operator, within forty-eight hours, or any extension of that period, after receiving an excavation notice from the center, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator, shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator.
  - b. For purposes of this section, the approximate horizontal location of the underground facilities is a strip of land two feet [60.96 centimeters] on either side of the underground facilities. This subdivision does not apply to an underground facility to convey water.
  - c. When an operator cannot establish the exact location of the underground facility to convey water, the operator shall mark the location as accurately as possible and the excavator may proceed with caution. When excavation operations approach the estimated location of the underground facility to convey water, the exact location of the facility must be determined by safe and acceptable means. The uncovered facility must be supported and protected to prevent damage.
  - d. Markers used to designate the approximate location of underground facilities must follow the current color code standard used by the American public works association.
  - e. If the operator cannot complete marking of the excavation area before the excavation commencement time stated in the excavation notice, the operator shall promptly contact the excavator.
  - f. After facilities are located by an operator, an excavator shall notify the notification center if:
    - (1) The excavator postpones the excavation commencement time stated in the excavation notice by more than forty-eight hours, or any extension of that period, or cancels the excavation;
    - (2) The markings have been obliterated or obscured;
    - (3) Weather conditions have impeded visibility of the markings;
    - (4) The site shows evidence of recent excavation; or
    - (5) The excavator has other reason to believe the markings are incorrect or missing.
  - g. An excavator may not use a location more than ten days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected.

- h. If in the course of excavation the excavator is unable to locate the underground facility or discovers that the operator of the underground facility has incorrectly located the underground facility, the excavator shall promptly notify the operator or, if unknown, the one-call notification center.
  - i. A facility owner, excavator, or other person may not present or presume that an underground facility is abandoned, or treat an underground facility as abandoned, unless the facility has been verified as abandoned by reference to installation records or by testing. The notification center shall establish a method of providing personnel from a facility owner qualified to safely inspect and verify whether a facility is abandoned or inactive if necessary. An inactive facility must be considered active for purposes of this section.
- 4. If an excavation is being made in a time of emergency, all reasonable precautions must be taken to protect the underground facilities. In an emergency, the excavator shall give notification in compliance with this chapter, as soon as practical, that an emergency exists. As soon as practical, each operator shall provide all location information that is reasonably available to the excavator.

**49-23-05. Precautions to avoid damage.** To avoid damage to and minimize interference with underground facilities in and near the construction area, an excavator shall:

- 1. Maintain a clearance between an underground facility and the cutting edge or point of any mechanized equipment, considering the known limit of control of the cutting edge or point to avoid damage to the facility.
- 2. Provide support in a manner approved by the operator for underground facilities in and near the construction area, including backfill operations to protect the facilities. Backfill must be of a material equal to or better in both quality and quantity to the existing backfill.
- 3. Assume ownership of materials used to mark the facility and when possible remove all tangible marking materials used to mark the facility.
- 4. Assume the cost of excavation to expose the facility unless otherwise indicated by owner of facility.
- 5. Conduct the excavation in a careful and prudent manner.
- 6. Properly manage spoil material to prevent shifting or falling material that could damage belowground facilities.

**49-23-06. Damage to facilities - Penalty.**

- 1.
  - a. If any damage occurs to an underground facility or its protective covering, the excavator shall notify the operator as soon as reasonably possible. When the operator receives a damage notice, the operator shall dispatch, as soon as reasonably possible, personnel to the damage area to investigate. If the damage endangers life, health, or property, the excavator responsible for the work shall take immediate action to protect the public and property and to minimize the hazard until arrival of the operator's personnel or until emergency responders have arrived and taken charge of the damaged area.
  - b. An excavator shall delay backfilling in the immediate area of the damaged underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise. The repair of damage must be performed by the operator or by qualified personnel authorized by the operator.

- c. An excavator who knowingly damages an underground facility and who does not notify the operator as soon as reasonably possible or who backfills in violation of subdivision b is guilty of a class A misdemeanor.
- 2.
  - a. If an excavator damages an underground facility, the excavator is liable for all damages to the facilities and must reimburse the operator for the cost of repair and restoration, loss of product, and interruption of service occurring because of the damage or injury to the facilities, together with reasonable costs and expenses of suit, including reasonable attorney's fees.
  - b. Reimbursement to the operator is not required if the damage to the underground facility was caused by the sole negligence of the operator or the operator failed to comply with sections 49-23-03 and 49-23-04.
- 3. It is prima facie evidence of the excavator's negligence in a claim for relief if damage to the underground facilities of an operator resulted from excavation and the excavator failed to give an excavation notice under section 49-23-04 or provide support as required by section 49-23-05.

**49-23-07. Effect on local ordinances.** A person with a permit for excavation from the state or a local governmental unit is subject to this chapter. This chapter does not affect or impair local ordinances, charters, or other provisions of law requiring permits to be obtained before excavating.